

MINUTES

**Tuesday, June 25, 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 11:01 a.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 and General Counsel Derek T. McDonald.

PUBLIC COMMENT

- Addressing the Board was 1) Joe Pangelinan (online), Chief Steward, AFSCME Local 444, who commented on recognition of management's retaliation against a Local 444 Steward; 2) Eric Larsen, President, AFSCME Local 444, who commented on management's unwillingness and inability to change course. Mr. Larson asked the Board to direct the Labor Negotiators and Managers to find solutions.

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 1:16 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 Assistant to the General Manager Janetta M. Johnson.

BOARD OF DIRECTORS

President McIntosh led the pledge of allegiance.

International Partnering Institute Award

General Manager Clifford Chan acknowledged the District received the Partner Project of The Year Award from the International Partnering Institute Award for the Maloney Pumping Plant and the Sobrante Water Treatment Plant Improvements Projects. The project improved system reliability and operational safety and reduced redundancy at two critical District facilities. Electrical upgrades included a new power building at each facility and an electrical intertie between the two facilities. Both facilities also had a new emergency stand-by generator with advanced emissions controls. Additional work included a capacity upgrade to the Maloney Pumping Plant from 30 to 45mgd per day. The General Manager commended the Engineering Construction Department on the partnering success of the project. Senior Civil Engineers Alexander Borys, Timothy P. Karlstrand, and Karl Tingwald; Associate Electrical Engineer Nikki Najdi; Assistant Engineers Dennis Lingad and Cameron Nauman; Manager of Facilities Maintenance and Construction Sharon Hu; and Senior Construction Inspector Teriane M. Reed represented the team. President McIntosh congratulated the team and thanked staff for all their work on behalf of the District. Founder of the International Partnering Institute Sue Dyer congratulated the group and presented the award.

Construction Management Association of America Award

General Manager Clifford Chan announced the District received the 2023 Construction Project Owner of the Year Award from the Northern California Chapter of the Construction Management Association of America. The General Manager recognized that the District's construction program has grown significantly over the years as it makes generational investments in the water and wastewater system infrastructure. Applying innovative construction and program management techniques, staff has met the moment and will continue to deliver on the investments made. Representing all those who contributed, Engineering Construction and Wastewater's Management leaders Senior Civil Engineers Angela L. El-Telbany and Timothy P. Karlstrand were on-hand to accept the award from the President of the Construction Management Association of America Andrew Middleman. President McIntosh thanked staff for all they do on behalf of the District.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- None.

CONSENT CALENDAR

- Motion by Director Linney, seconded by Director Young to approve the recommended actions for Items 1-12 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. The following correspondence was filed with the Board: 1) Presentation entitled "Exercise of AB 408 Authority," dated June 25, 2024; 2) Presentation entitled "Communications Update," dated June 25, 2024; 3) Speakers' Bureau and Outreach Record CY24, dated June 25, 2024; 4) Email dated June 19, 2024 from Ivette Rivera to Board of Directors regarding AFSCME EBMUD new Gardener Foreman and Grounds Maintenance Foreman Performance Plan; 5) Email dated June 21, 2024 from Ivette Rivera to Board of Directors regarding PRR-2024-38 - (Clarification needed) with attachments; and 6) Email dated June 21, 2024 from Ivette Rivera to Board of Directors regarding

Board Packet.

2. **Motion No. 114-24** – Authorized an agreement beginning on or after June 25, 2024, with Carollo Engineers, Inc. in an amount not to exceed \$3,576,500 for professional engineering design services for infrastructure and process improvements for Point Isabel, Oakport, and San Antonio Creek wet weather facilities.
3. **Motion No. 115-24** – Authorized an agreement beginning on or after July 1, 2024 with Civicorps for one year in an amount not to exceed \$636,000 for vegetation control and related services at various District properties.
4. **Motion No. 116-24** – Authorized an agreement beginning on or after June 25, 2024 with Enthalpy Analytical, LLC for \$262,000 for two years, with three options to renew for additional one-year periods for a total amount, including option years, not to exceed \$655,000 for laboratory sample analysis services.
5. **Motion No. 117-24** – Authorized an agreement beginning on or after July 1, 2024 with Industrial Employers and Distributors Association for \$264,994 for two years, with an option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$407,515 for expert labor relations negotiating and consulting services.
6. **Motion No. 118-24** – Authorized an agreement beginning on or after June 25, 2024 with Info-Tech Research Group Inc. for \$162,424 for two years and an additional \$61,451 for optional, additional services for a total amount not to exceed \$223,875 for information and technology research and advisory services to support District IT strategy, governance, innovation, planning, change management and continuous improvement. This agreement will be made under State of California contracts available for use by local governments.
7. **Motion No. 119-24** – Authorized an agreement beginning on or after June 25, 2024 with Trace3, LLC in an amount not to exceed \$166,000 for one year for maintenance and support services for NetApp data storage system software and related hardware. This agreement will be made under State of California contracts available for use by local governments.
- 8a. – **Motion No. 120-24** – Authorized amendments to the agreements previously authorized under Board Motion No. 011-24 with Bay Line Cutting & Coring, Inc.; Concrete Demo Works, Inc.; Concrete Wall Sawing Co., Inc.; Fine Line Sawing and Drilling, Inc.; and Penhall Company, to increase the aggregate amount of those agreements by \$1,300,000 to a total aggregate amount not to exceed \$4,065,000 and extend the term of the agreements to June 25, 2025 for asphaltic cement and concrete saw cutting services; and authorized additional agreements for asphaltic cement and concrete saw cutting services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on June 25, 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.
- 8b.
9. **Motion No. 121-24** – Authorized an amendment to the agreement previously authorized under Board Motion No. 169-18, with Solar Turbines Incorporated to increase the agreement amount by \$4,550,000 to a total amount not to exceed \$8,850,000 and extend the agreement term to June 30,

2029 for turbine service, repairs, and equipment replacement, at the District's Main Wastewater Treatment Plant.

10. **Motion No. 122-24** – Authorized an agreement beginning on or after June 25, 2024, with the University of California San Diego Scripps Institution of Oceanography's Center for Western Weather and Water Extremes in an amount not to exceed \$178,000 to conduct Phase 1 of a pre-feasibility analysis of forecast informed reservoir operations at Pardee and Camanche reservoirs.
11. **Motion No. 123-24** – Approved the May 2024 Monthly Investment Transactions Report.
12. **Resolution No. 35409-24** – Adopting Revised Policy 7.03, Emergency Preparedness/Business Continuity.

DETERMINATION AND DISCUSSION

13. **Legislative Update.**

The bills were not presented in the same order of the agenda.

Special Assistant I Debra L. Michel reviewed Legislative Report No. 05-24: SB 1255 (Durazo), which focuses on public water systems and a water rate assistance program. She recommended the Board support the bill with amendments. Starting July 1, 2027, retail water suppliers would provide rate assistance to low-income residential customers. This assistance would be funded by a voluntary contribution, capped at 5% of water and wastewater charges from non-low-income ratepayers. Non-low-income customers would be automatically enrolled unless they opt out, with contributions beginning by September 1, 2026. Water systems could start collecting monies at least ten months before SB 1255 requires notice to all customers of the contribution and how they can opt out of it before the contribution is placed on their water bill. EBMUD estimates about 10,000 low-income households currently benefit from their Customer Assistance Program (CAP), with potential for 20,000 more eligible households. The bill's impact depends on the number of new eligible customers and the funding raised through voluntary contributions. It will be difficult to estimate the bill's impact without knowing 1.) the number of new eligible ratepayers the EBMUD would have to auto-enroll for rate assistance, and 2.) the funding level to be raised by a voluntary contribution on certain customer bills. Page 11 of Legislative Report No. 05-24 outlines the four rate assistance scenarios EBMUD may take based on the bill's current language and for EBMUD to be exempt for the auto-enrollment requirements, amendments to the bill would be needed. Other impacts to EBMUD were identified related to receiving and sorting through data provided by PG&E for customers enrolled in their affordability program and matching those to EBMUD customer accounts can be time-consuming, accounting impacts as the voluntary contributions fluctuate, and due to Proposition 218, any cost solely attributable to implementing a low-income rate assistance program may need to be funded by non-rate revenue or by proceeds from the voluntary contributions. Staff recommended two amendments to ensure EBMUD can keep offering the Customer Assistance Program (CAP) we currently provide. Proposed amendments that would allow EBMUD to continue to coordinate with a third party and contract with nonprofits to provide crisis assistance through its existing Water Lifeline program are on page 13 of Legislative Report No. 05-24. There was considerable Board discussion on SB 1255. Director Gomez asked about partnering with other public programs for easier eligibility data access. Director Young emphasized EBMUD's commitment to customer assistance as one of the few water utilities in California to have an assistance program and it's important for EBMUD to state customer

assistance is something the District has been committed to for decades. She supports the bill pending amendments and appreciates the bill sponsors are ready to move on an amendment that would allow the District to apply it to arrearages. Director Katz expressed that only one scenario is a feasible option as the others would box EBMUD into a lower benefit level for existing CAP customers and advocated for clear communication with the legislature as the District is not interested in reducing benefits. Multiple members of the Board commented on the inability to be able to address customers with a large a high bill arrearage. Director Linney sought clarification as to how the bill bypasses Proposition 218 and how the opt out process would work and is it applied as a percentage or flat amount. President McIntosh commented as to how the voluntary contribution opt out notice is presented to customers on their bills. Overall, the Board is supportive of the bill's intent, but EBMUD seeks amendments to ensure the program's effectiveness and protect current assistance levels for customers in need. The Board noted that since this bill was complex a slide presentation or chart of key outcomes would have been helpful.

Manager of Legislative Affairs Kathy Viatella reviewed Legislative Report No. 05-24: AB 460 (Bauer-Kahan). Staff recommended EBMUD move from our opposed unless amended position to a support position for the bill. AB 460 (Bauer-Kahan), as amended on June 12, 2024, would require the State Water Board to adjust for inflation by January 1 of each year, beginning in 2025, the amounts of civil and administrative liabilities or penalties imposed by the State Water Board in water right actions. The bill was significantly amended on June 12, and it is now more focused on enforcement and it does that by increasing certain civil and administrative penalties that the State Water Board may impose when there is a violation of a water right or regulation. AB 460 is intended to deter unlawful behavior under California's water rights system. The bill would increase the maximum civil penalty for a person who violates certain cease and desist orders issued by the State Water Board from \$1,000 to \$2,500 for each day the violation occurs, as specified. The bill would also increase the maximum civil penalty issued by the State Board from \$500 to \$1,000 for each day a person or entity violates a term or condition of a permit, license, and a new provision in the law it provides that if a person or an entity that violates or curtailment order. They may be liable for \$10,000 for each day the violation occurs, which is a pretty stiff penalty and \$2,500 for each acre foot of water diverted in violation of a court helmet order. Director Linney commented limited support from other agencies. However, Ms. Viatella informed the Board the bill is being heard today, and the list has been updated so more agencies are moving over into the support column.

Ms. Viatella gave an update on AB 1337 (Wicks). The bill sought to authorize the State Water Board to curtail any water diversions and unauthorized aversions would be considered as trespass. The author decided to pull the bill after determining that they could not meet the general fund "do no harm" standard for the legislation. Next, she noted the California Supreme Court removed the Taxpayer Protection Act from the November ballot.

– Director Chan left the meeting at 1:46 p.m. and returned at 1:48 p.m.

- Motion by Director Young, seconded by Director Katz to approve the recommended actions for Item 13's SB 1255 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion by Director Linney, seconded by Director Katz to approve the recommended actions for Item 13's AB 460 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 124-24 – Received Legislative Report No. 05-24 and approved positions on the following bills: 1) SUPPORT AB 460 (Bauer-Kahan) State Water Resources Control Board: water rights and usage: civil penalties; and 2) SUPPORT IF AMENDED SB 1255 (Durazo) Public water systems: needs analysis: water rate assistance program.

14. **Schedule a special meeting of the Board of Directors in August 2024 to allow the Board to exercise its Assembly Bill 408 authority for the 2024 general election.**

General Counsel Derek T. McDonald presented the report. The Board is being asked to exercise its authority under Assembly Bill (AB) 408 which authorizes the Board to appoint a candidate to office in the event that no candidate or one candidate opts to run for an open ward seat in a District election. General Counsel discussed the options that AB 408 provides the Board for both appointment and holding the election and the very tight timeline in which those options have to be exercised. AB 408 was sponsored by EBMUD in 2013 after years of elections for which there were only one candidate for office; providing the District with the same authority held by other public entities and allow the District to essentially save costs of an election where there's no opposition to the sole candidate. The cost of the election for two wards in 2022 was approximately \$772,000. Staff recommends scheduling a special meeting of the Board of Directors in August 2024 to allow the Board to exercise its AB 408 authority for the 2024 general election. General Counsel advised the Secretary of the District Rischa Cole will schedule the date for the Special Meeting. There was Board discussion. General Manager Chan responded to Board questions related to rescheduling a regular meeting versus scheduling a special meeting.

– President McIntosh left the meeting at 2:04 p.m. and returned at 2:04 p.m.

- Motion by Director Young, seconded by Director Chan to approve the recommended actions for Item 14 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 125-24 – Voted to schedule a special meeting of the Board of Directors in August 2024 to allow the Board to exercise its Assembly Bill 408 authority for the 2024 general election.

15. **Adopt a resolution to approve an appointment process to be used by the Board of Directors during a general election in the event there is no candidate for an open ward seat.**

General Counsel Derek T. McDonald presented the item with a suggested appointment process at a Special Meeting to be adopted between the 83rd and 76th day before the election. Assembly Bill (AB) 408 is codified in the MUD Act. Section 11852.5 gives the Board a short timeframe to use its authority. The General Counsel outlined a timeline from August 13 to November 5, 2024, for the upcoming election and recommended adopting a resolution to approve a process for appointing Board members if no candidate runs for an open ward seat during a general election. The Board discussed the election process. Director Young sought clarification that the appointment process is only used if no candidate files for a Board seat which General Counsel confirmed, adding that if only one person files, the Board can choose to appoint that person or hold an election. The Board inquired about two different scenarios: (1) when an incumbent has no challenger and (2) when an incumbent doesn't file and an extension is granted, still within 83rd to 76th days before the election. General Counsel stated that before the election is correct. The Board requested staff to investigate what happens if there's no uncontested contest for a departing

incumbent's seat, leading to an automatic extension to August 14 or the only applicable race where there's just one candidate is when the incumbent and no extension is granted. The Board also discussed incorporating the appointment process into their regular meeting on August 13, 2024, without needing additional notice, as long as the agenda is posted by August 9, 2024. They planned to potentially take action on August 12, depending on feedback from the county registrar. Additionally, the Board asked for changes to the Resolution, allowing an Ad Hoc Committee to decide on interview length, including the appointed candidate's start date in materials, and excluding the last two bullets.

Motion by Director Katz, seconded by Director Gómez to approve the recommended actions for Item 15 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35410-24 – Approving A Process To Appoint A Director To A Ward In An Election In Which No Person Has Filed A Statement Of Candidacy For The Ward.

16. **General Manager's Report.**

Communications Update

Special Assistant to the General Manager Kelly A. Zito provided the presentation. Ms. Zito reviewed Fiscal Year (FY) 2024 achievements which include the centennial "A Lifeline for 100 Years" video, employee picnics held in Lafayette and Sacramento, and vintage truck posters art show. She noted the District prioritized building relationships with local governments, chambers, upcountry stakeholders and community organizations and conducted presentations for city councils, municipal advisory councils, community meetings, and chamber events. Staff supported 54 Board speaking engagements and expanded and improved the District's Community Water Academy adding full-day Pardee/ Hatchery tours. The education program for K-12 students was updated through robust, meaningful, and hands-on Science, Technology, Engineering, Art, and Math (STEAM) experiences. The District received the California Association of Public Information Officials' Award of Distinction. The District's press, social media, and digital and print publications were also discussed. EBMUD grew its online presence on all channels. Outreach efforts that showed 62 percent of coverage is online media, followed by television (13 percent), social media (8.6 percent), and radio (4.6 percent). Staff launched a new Digital Media Library and published the first biennial report in a StoryMap format. Upcoming activities for FY2025 include a historical, digital flipbook that spotlights key events, stories, photos, and videos in each decade of the District's 100 years of service; redesign of Administration Building's 1st floor lobby; increasing EBMUD's digital content including social media ads highlighting EBMUD's diverse workforce. Looking ahead with the Educational Program, staff will update interpretive signs to include QR codes that link to additional resources. Create STEAM kits with water lessons for educators and expand teacher training, workshop opportunities, and public tours measuring initiatives' performance against FY 2025-2026 communication benchmarks. Staff will continue to support the Board through ward events, speaking engagements, public meetings, and other activities. President McIntosh inquired if there will be educational partnerships with entities outside of the Oakland, CA area and staff stated initial outreach was with community partners with related educational content in place and as the program moves forward to create more partnerships throughout the service area. Directed Young inquired about some of the water field trips and assemblies that took place in FY 2024. Staff will continue to improve and enhance outreach, engagement, and education efforts to support the District's Strategic Communications Plan goals. Director Patterson highlighted the work with media outlets. Director Gómez recognized the work of the Water Academy. Director Katz asked staff to think about our Title I schools and how we are measuring participation of school districts in the service area as a

whole. President McIntosh congratulated Public Affairs staff on a phenomenal job and thanked staff on behalf of the Board.

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

REPORTS AND DIRECTOR COMMENTS

17. Committee Reports.

- Chair Doug A. Linney reported the Sustainability Committee met earlier and received an update on the Annual Integrated Pest Management Program. Chair Linney stated the committee is looking for alternatives to anything that would harm the environment and people. An updated report with the cost analysis will be presented at the Sustainability Committee in October 2024.
- Chair Andy Katz reported that the Finance/Administration Committee met earlier and received two items: the Monthly Investment Transactions Report and Revisions to District Policy 7.03 - Emergency Preparedness/Business Continuity. Both items were approved on the Consent Calendar, Items 11 and 12.

Director Chan left the meeting at 2:57 p.m. and returned at 2:58 p.m.

18. Other Items for Future Consideration.

None.

19. Director Comments.

- Director Chan reported attending the AWWA this year and sat in on some of the sessions and reviewed the exhibits. Learned a lot about EBMUD and nice engagement from attendees.
- Director Gómez reported engaging with Walnut Creek Water Treatment Plan project residents. She stated they had one meeting so far, very positive dialogue and another meeting is scheduled.
- Director Linney reported attending a liaison committee meeting regarding the Bayside project. He stated there was a great presentation by the staff, there were good questions and discussions; and the District should continue holding these meetings.
- Director Patterson announced that he has been invited to a number of community meetings and there is great concern in the community. People are threatened and do not feel safe in the community. Stated how the community needs to come together. He has been asked to help with these meetings and will have his son help with this effort.
- Director Young reported attending a field trip on June 22 regarding trail segments. She attended with General Manager Chan, Manager of Watershed and Recreation Scott D. Hill, members from the Sierra Club, California Native Plant Society and other individuals.

Director Young stated they looked at trail segments with the interest of adding more miles of bike-accessible trails to our watershed.

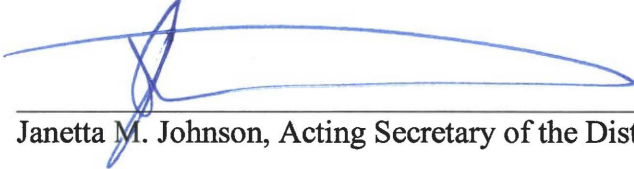
- President McIntosh addressed Olujmi O. Yoloye and read a statement regarding his upcoming retirement. She spoke about his tenure and impact on the District; during his time leading the Engineering and Construction Department soared to new heights, acknowledging that in the last year alone the department received several accolades, most notably Jimi's lifetime achievement award from the Society of Civil Engineers and commended him on his 39 years of service at EBMUD.

- Director Katz had no report.

ADJOURNMENT

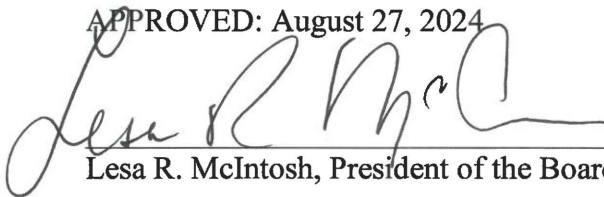
President McIntosh adjourned the meeting at 3:08 p.m.

SUBMITTED BY:



Janetta M. Johnson, Acting Secretary of the District

APPROVED: August 27, 2024



Lesa R. McIntosh, President of the Board