

MINUTES

Tuesday, April 27, 2021

**East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California
Virtual**

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:04 a.m. He announced that due to COVID-19 and in accordance with the latest Alameda County Health Order, and with the Governor's Executive Order N-29-20 which suspends portions of the Brown Act, this meeting will be conducted remotely. In compliance with said orders, a physical location was not provided for this meeting. These measures will only apply during the period in which state or local public health officials have imposed or recommended social distancing.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan; General Counsel Craig S. Spencer; Assistant General Counsel Jonathan D. Salmon (Item 1a); Attorney Anna P. Gunderson (Item 1a); Attorney Derek T. McDonald (Item 1a); Director of Wastewater Eileen M. White (Item 1a); Assistant General Counsel Lourdes Matthew (Items 2 and 3); Secretary of the District Rischa S. Cole (Item 2); Director of Operations and Maintenance David A. Briggs (Item 2); Manager of Human Resources Laura A. Acosta (Item 3); Manager of Employee Relations Niger M. Edwards (Item 3); and Industrial Employers Distributors Association representatives Gregory Ramirez and Jeff Bailey (Item 3).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and the Board convened for discussion (remotely).

Regular Business Meeting

President Linney called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. He announced that due to COVID-19 and in accordance with the latest Alameda County Health Order, and with the Governor's Executive Order N-29-20 which suspends portions of the Brown Act, this meeting will be conducted remotely. In compliance with said orders, a physical location was not provided for this meeting. These measures will only apply during the period in which state or local public health officials have imposed or recommended social distancing.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Craig S. Spencer, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

PRESENTATION

General Manager Clifford C. Chan announced the Wastewater Treatment Plant Virtual Tour Program received the National Association of Clean Water Agencies' 2021 National Environmental Achievement Award for Public Information and Education. Since 2016, the District has offered in-person tours to educate the public on wastewater treatment processes and its role in protecting public health and the San Francisco Bay. In spring 2020, when in-person tours were suspended due to the pandemic, staff quickly developed a live, virtual-tour experience. This new format has allowed the District to reach a broader, larger, and multilingual audience. Group sizes are no longer limited; minimum age requirements are lifted; geographic and transportation constraints are removed; and the carbon footprint of driving to the Main Wastewater Treatment Plant is eliminated. Attendance more than double from just under 1,000 participants in past years to approximately 2,500 in 2020. The District will continue virtual tours as pandemic restrictions subside. General Manager Chan acknowledged the following team members for their work on the tour program: Wastewater Control Representative Kristen Font; Supervising Wastewater Control Representative Phoebe A. Grow; Associate Civil Engineer James E. Hake; Associate Civil Engineer Kevin Jim; Associate Civil Engineer Jennifer S. Ku; Senior Administrative Clerk Matilda M. Leong; Associate Civil Engineer Rebecca C. Overacre; and Assistant Engineer Sarah F. Plummer. On behalf of the Board, President Linney thanked staff for their efforts developing the virtual tour program.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

There was no public comment.

CONSENT CALENDAR

- Item 10 was pulled from the Consent Calendar for discussion.
- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Items 1-9 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 068-21** – Approved the Regular Meeting Minutes of April 13, 2021.
2. The following correspondence was filed with the Board: **1)** Presentation entitled “2021 Water Supply Availability & Deficiency Report,” dated April 27, 2021; **2)** Presentation entitled “2021 Drought Declaration and Actions,” dated April 27, 2021; **3)** Presentation entitled “Extend Authorization of Short-Term Indebtedness,” dated April 27, 2021; **4)** Presentation entitled “Coronavirus Update,” dated April 27, 2021; **5)** Presentation entitled “Fossil Site Update,” dated April 27, 2021; **6)** Updated Revised Policy 1.12, Prevailing Wage Provisions in Contract Agreements; and **7)** Speakers’ Bureau and Outreach Record CY21, dated April 23, 2021.
3. **Motion No. 069-21** – Awarded a contract to the lowest responsive/responsible bidder, Cambridge Brass, Inc., for supplying 6-inch and 8-inch service clamps for three years, beginning on or after May 3, 2021 with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$335,945 under Request for Quotation No. 2107.
4. **Motion No. 070-21** – Awarded a contract to the lowest responsive/responsible bidder, Condon-Johnson & Associates, Inc., in an amount not to exceed \$6,515,100 for construction of the Moraga Creek Flood and Erosion Control project under Specification 2172.
5. **Motion No. 071-21** – Awarded a sole source contract to PPI America, Inc. for supplying ductile polyvinyl chloride pipe for the District’s pipeline replacement program, for one year, beginning on or after May 1, 2021, with four options to renew for additional one-year periods, for a total cost after the addition of taxes, including option years, not to exceed \$6,000,000.
6. **Motion No. 072-21** – Authorized a second amendment to the agreement previously authorized under the General Manager’s authority with Northwest Industrial Engine & Compressor Co. to increase the agreement amount by \$8,000 to a total amount not to exceed \$88,000 for overhaul of the Main Wastewater Treatment Plant Power Generation Station Gas Compressors 1 and 2.
7. **Motion No. 073-21** – Authorized a second amendment to the agreement previously authorized under the General Manager’s authority with Oppenheimer Investigations Group to increase the agreement amount by \$30,000 to a total amount not to exceed \$110,000 and extended the agreement term to September 30, 2021 for equal employment opportunity investigative services.
8. **Motion No. 074-21** – Approved the March 2021 Monthly Investment Transactions Report.
9. **Resolution No. 35220-21** – Adopting Revised Policy 4.07; Investment Policy And Renewing Existing Delegation Of Authority For The Management Of Investments On Behalf Of East Bay Municipal Utility District And Its Joint Powers Authorities To The Director Of Finance, As The Treasurer Of The District.
10. **Resolution No. 35221-21** – Adopting Revised Policy 1.03, Contract Equity Program; Revised Policy 1.12, Prevailing Wage Provisions In Contract Agreements; Revised Policy 2.02, Accommodation For Individuals With Disabilities In The Workplace; Revised Policy 2.25, Equal Employment Opportunity; Revised Policy 6.04, Ethics Of The EBMUD Board Of Directors; Revised Policy 7.13, Security; Revised Policy 7.14, Unmanned Aerial Vehicle

Operation; Revised Policy 9.04, Watershed Management And Use; And Revised Policy 9.07, Dam Safety Program.

- General Manager Clifford C. Chan announced staff made additional revisions to the scope section in Policy 1.12 after it had been mailed to the Board; the new, revised copy was sent to the Board via email prior to today's meeting. All policies including the updated, revised Policy 1.12 was reviewed at the Finance/Administration Committee meeting earlier in the day.
- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Item 10 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

DETERMINATION AND DISCUSSION

11.1. File the 2021 Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 - Water Supply Availability and Deficiency; and declare the District's water supply is deficient for meeting customer demands.

Engineering Manager Lena L. Tam presented the Water Supply Availability and Deficiency Report which evaluates the adequacy of the current year's (2021) water supply. Based on the current 2021 runoff projections, the District's water supply is not sufficient for meeting customer demands with sufficient end of year storage and after meeting flow obligations in the Lower Mokelumne River. Ms. Tam reviewed the District's current water supply and rainfall projections. As of April 18, Mokelumne precipitation was 23.52 inches or 54% of average; East Bay precipitation was 8.31 inches or 33% of average; and the District's total system storage was 534,600 acre-feet or 85% of average and 69% of capacity. Dry year precipitation data from 2008 through 2021 showed 2021 as the driest rain year on record in the East Bay and the second driest on record in the Mokelumne watershed. She reported the District received a letter from the State Water Resources Control Board on March 22 requesting the District take action in response to dry conditions in the state but that to date, the state has not issued a curtailment notice. Based on the Department of Water Resources' April 1 snow survey, the District's end of September total system storage is projected to be 475,000 acre-feet (TAF); runoff is projected to be 325 TAF; and the Joint Settlement Agreement year type is projected to be "dry." She highlighted the District's "dry" flow release obligations and said Woodbridge Irrigation District is scheduled to receive a reduced base supply of 39 TAF; Jackson Valley Irrigation District is scheduled to receive the full maximum entitlement of 3,850 acre-feet; North San Joaquin Water Conservation District will not receive any water; and that based on current projections, there will be no 'surplus' water available. She went over the District's current and proposed Drought Management Program (DMP) Guidelines. The proposed guidelines recommend shifting the recommended total system storage trigger for delivery of supplemental supply through the Freeport Regional Water Project from 450 TAF to 475 TAF and adjusting the threshold for declaring a Stage 1 drought from 500 TAF to 475 TAF. The guidelines would also implement mandatory rationing at 425 TAF instead of 390 TAF of total system storage. The updated guidelines will be considered by the Board in May 2021 and if adopted, would take effect in June 2021. As the DMP guidelines are advisory in nature, the District may consider both the guidelines adopted in 2016 and the proposed revised guidelines when determining whether to declare a drought and respond to the imbalance between supply

and demand. Based on current water supply and rainfall projections, under the proposed, revised guidelines, the District is in the range of declaring a Stage 1 drought. Ms. Tam and General Manager Chan responded to Board questions regarding supplemental water supply purchases during the last drought; how the proposed project to expand the Los Vaqueros Reservoir comes into play with the drought today; and a request for additional clarification on hydrology and consumption patterns to better understand the need to use the Freeport Regional Water Project.

- Motion by Director Coleman, seconded by Director Mellon, to approve the recommended actions for Item 11.1 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion 075-21 – Filed the 2021 Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 - Water Supply Availability and Deficiency; and declared the District’s water supply is deficient for meeting customer demands.

- Director Patterson lost connection at 1:32 p.m. and rejoined the meeting at 1:39 p.m.

11.2. Adopt a resolution declaring a Stage 1 Drought, establishing a District-wide voluntary water use reduction goal of ten percent, declaring the need to purchase supplemental supplies from the Central Valley Project (CVP) and to divert such supplies at the Freeport Regional Water Project, and directing additional demand management measures to promote water conservation.

Director of Water and Natural Resources Michael T. Tognolini presented information on proposed actions for the Board to consider in declaring a Stage 1 drought. The most recent end of September total system storage forecast for this year indicates water supplies are not sufficient to meet customer demands, after making required releases to meet all applicable downstream obligations, as described in the 2021 Water Supply Availability and Deficiency Report (WSADR) presented by Ms. Tam. Based on the analysis in the WSADR (including forecasted water supply and demand) and the recommendations contained in the District’s operative and proposed revised Drought Management Program (DMP) Guidelines, District staff recommends three drought response actions at this time. Mr. Tognolini discussed key lessons learned from the 2014-2016 drought and said the proposed revised DMP guidelines reflect the experience from that drought. Given this year’s low water supply and rainfall projections, staff is recommending the Board declare a Stage 1, “moderate” drought; acquire up to 58,000 acre-feet of CVP water during the 2021 contract year; and declare up to 10 percent District-wide voluntary water use reduction along with further demand management measures to promote water conservation including initiating a public information campaign and offering expanded services which promote customer water conservation. He reviewed the timeline, as well as the costs and actions required to obtain the District’s CVP water and the proposed costs, demand reduction totals, and messaging plan for implementing voluntary water use reduction measures. Mr. Tognolini, General Manager Chan, Special Assistant to the General Manager Kelly A. Zito, and Customer and Community Services Manager Andrew L. Lee responded to Board questions regarding drought messaging on bill inserts, potential increased costs to educate customers about drought preparations, drought messaging for customers who pay their bills online, funds available in the District’s rate stabilization fund, costs to use CVP water, gainsharing, and potential impacts to

the cold water pool in Camanche Reservoir when the District takes its supplemental supplies through the Freeport Regional Water Project.

- Addressing the Board were the following persons: 1) Heinrich Albert, Sierra Club commented on potential impacts to wildlife and salmon mortality if the District takes its CVP allocation and asked the Board to consider not requesting the CVP water; and 2) Peter Rosen, landscape contractor, commented on aggressive water conservation efforts for residential customers and District plans for additional use of recycled water.

Mr. Tognolini and Mr. Lee responded to the public comments and Board questions arising from the public comments. The Board thanked staff for the information presented and requested additional information on the rationale for adjusting the thresholds in the DMP guidelines; additional water conservation measures and outreach efforts (including outreach to homeowners associations and multi-family residential customers) as a part of the District's drought response measures; the Sacramento Municipal Utility District tariff being used to operate the Freeport and Clay Station Pumping Plant facilities; and potential impacts to the cold water pool in Camanche Reservoir due to operation of the Freeport Regional Water Project facilities. The Board also asked staff to ensure construction mailers and ebmud.com include information about the District's pipeline flushing activities; ensure call center staff have information about the District's pipeline flushing activities; and offer water from pipeline flushing to cities and residents.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Item 11.2 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35222-21 – Declaring A Stage 1 Drought, Establishing A District-Wide Voluntary Water Use Reduction Goal Of Ten Percent, Declaring The Need To Purchase Supplemental Supplies From The Central Valley Project And To Divert Such Supplies At The Freeport Facilities, And Directing Further Measures To Promote Water Conservation.

12. **Authorize successive issues of short-term indebtedness payable solely from revenues, as set forth in Chapter 7.5 of the Municipal Utility District Act, for an additional seven years and direct publication of attendant resolution.**

Treasury Manager Robert L. Hannay presented information on a resolution authorizing successive issues of the District's commercial paper programs one year earlier than the expiration date. If approved, this authorization would accommodate the right to referendum in the Municipal Utility District Act (MUD Act), provide for ongoing commercial paper note rolls, and support the extension or procurement of bank facilities. Pursuant to the MUD Act, the Board must authorize the issuances at least every seven years; the last re-authorization was in 2015. The District currently has \$335.8 million of outstanding water commercial paper (Water CP) and \$10 million of outstanding wastewater extendable commercial paper (ECP). The combined commercial paper program is a form of variable-rate debt that typically provides a lower cost to borrow compared with other components of the District's debt portfolio. As discussed at the February 23, 2021 Finance/Administration Committee meeting, staff plans to pay down the Water CP by approximately \$23 million and the wastewater ECP by approximately \$700,000.

Mr. Hannay noted these amounts could change between now and the end of FY21 (June 30), based on actual expenses relative to budget. He explained why staff was requesting this action one year earlier than the commercial paper programs' expiration date and the right to referendum process as outlined in the MUD Act. If approved, the Secretary of the District will be required to publish the resolution in a newspaper of general circulation printed and published within the District. Should three percent of the voters in the District submit a signed referendum petition during that period demanding submission of the resolution to the voters of the District, the resolution shall be of no effect until it has been approved by the voters. Finance/Administration Committee Chair William B. Patterson reported in its meeting earlier in the day, the Committee voted to support staff's recommendations.

- Motion by Director Patterson, seconded by Director Mellon, to approve the recommended actions for Item 12 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35223-21 – Declaring The Intention Of The Board of Directors Of East Bay Municipal Utility District To Authorize Successive Issues Of Short-Term Indebtedness Payable Solely From Revenues And Directing The Publication Of This Resolution.

13. **Authorize the General Manager to sign the petition on behalf of the District to support the formation of the Oakland Chinatown Community (OCC) Benefit District.**

General Manager Clifford C. Chan said the Oakland Chinatown community and organizational leaders are petitioning to form a special assessments district to provide supplemental services to property owners and benefit residents, businesses, organizations, employees, and visitors to the area. The benefits and improvements include but are not limited to beautification and supplemental maintenance of sidewalks, gutters, and graffiti removal; hiring special ambassadors or private security to walk and bike throughout Chinatown to provide bilingual assistance, pedestrian safety, and assist in responding to homeless issues, aggressive panhandling, and mental health crises occurring in the public rights-of-way; and supporting special events to promote Oakland Chinatown. If the petition is successful, the Board will be asked, at a meeting prior to July 20, 2021, to consider authorizing the District to cast EBMUD's ballot for the OCC Benefit District. The proposed annual budget for the OCC Benefit District is \$1,309,445. The District's proportional share of these costs would be an annual special assessment of \$10,033.70 payable to the OCC Benefit District. Director Patterson reported he would be participating in a rally hosted by the Oakland Chinatown Chamber of Commerce on May 15 with Chamber President Carl Chan. General Counsel Craig S. Spencer responded to a Board question on whether there is a Downtown Oakland Benefit District and if there is, if the benefits provided overlap with the proposed OCC Benefit District.

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended action for Item 13 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion 076-21 – Authorized the General Manager to sign the petition on behalf of the District to support the formation of the Oakland Chinatown Community Benefit District.

14. **General Manager's Report.**

Coronavirus Update

Director of Operations and Maintenance David A. Briggs reported Alameda, Contra Costa and Calaveras counties are in the Orange Tier on the state's positivity matrix, while Amador and San Joaquin counties are in the Red Tier. No significant impacts on District operations and no significant changes to safety protocols are expected because of tier status. He highlighted the state business restrictions that could end on June 15; the expanded COVID-19 leave provided by SB 95; the number of positive COVID-19 cases at the District to date; and the latest data on employee and state vaccinations. He reviewed the District's and the Board of Directors' Safe Return to Workplace Plans and said the plans will be adjusted once more information and direction is received from the CDC and/or local health orders are revised.

Fossil Site Update

Ranger/Naturalist II Gregory A. Francek presented an overview of a significant fossil deposit from the Miocene era (23 million to 3.5 million years ago) that was discovered on District property in July 2020. A project team consisting of Mr. Francek, Dr. Russell Shapiro from California State University, Chico (CSU Chico), a consultant from Environmental Science Associates, and a group of scientists have been excavating and recovering specimens from the site. Mr. Francek reviewed the geologic time scale, excavation and recovery methods, and described photos of some of the specimens. Some specimens include a rhino jaw, a tortoise underbelly, fossilized trees, bones from horses, fish, birds, and other wildlife as well as gomphothere and mastodon tusks. All specimens are owned by EBMUD but are currently in several private labs. The specimens will go to CSU Chico for study and then to UC Berkeley for final repository. Select specimens will be returned to the District for educational programs and display. He described ongoing security measures for the site and long-term plans to continue surveying, recovering and studying the findings. Ranger staff and CSU Chico students will use the specimens and paleontology story for interpretive content and educational purposes. Director of Water and Natural Resources Michael T. Tognolini acknowledged Mr. Francek and the scientists who are volunteering their time on the project. Mr. Francek thanked staff for supporting the project and responded to Board questions regarding a possible tour of the site.

- Director McIntosh lost connection at 3:12 p.m. and did not return to the meeting.

REPORTS AND DIRECTOR COMMENTS

15. **Committee Reports.**

- Filed with the Board were Minutes for the April 13, 2021 Planning Committee and Legislative/Human Resources Committee meetings.
- Sustainability/Energy Committee Chair Marguerite Young reported the Committee met earlier in the day (remotely) and received an update on the Annual Integrated Pest Management Program.

- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day (remotely) and received information on the March 2021 Monthly Investment Transactions Report for March 2021, Quarterly Financial Reports for the quarter ended March 31, 2021, Annual Investment Policy Review, Extend Authorization of Short-Term Indebtedness, Customer Support Funding Program and Revisions to District Policies.

16. **Other Items for Future Consideration.**

None.


17. **Director Comments.**

- Director Coleman reported attending the San Ramon Exchange Club on April 14; FRWA Board meeting on April 15; Los Vaqueros Expansion Ad Hoc Committee meeting on April 20; and the UMRWA Board meeting on April 23. He reported on plans to address the Lafayette Rotary on May 6; address the San Ramon/Danville Real Estate Marketing Association on May 13; address the San Ramon Rotary on May 13; attend the DERWA Board meeting on May 17; and address the Danville/San Ramon Rotary on June 8. All meetings and events were/will be attended remotely.
- Director Patterson reported on a recent Voices for Change segment on Channel 2 that featured Rue Mapp, founder of Outdoor Afro.
- Director Young reported participating in a tour of the “secret garden” in the District’s watershed and the tour of fuel management sites in the watershed on April 21. She reported on plans to participate in the May Day parade in San Francisco on May 1.
- Directors Katz, McIntosh, and Mellon and President Linney had no report.

ADJOURNMENT

President Linney adjourned the meeting at 3:43 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: May 25, 2021



Doug A. Linney, President of the Board