

MINUTES

Tuesday, January 12, 2016

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

Regular Closed Session Meeting

President Frank Mellon called to order the Regular Closed Session Meeting of the Board of Directors at 11:08 a.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Customer and Community Services Sherri A. Hong (Item 1), Customer Services Manager Andrew L. Lee (Item 1), and Attorney Derek T. McDonald (Item 1).

PUBLIC COMMENT

- Addressing the Board was M. Rosa Merced, LGBTQ Pride Month Committee, who presented a memorandum along with various attachments regarding a request that the Board remove several non-exempt employees from participation in any actions or fact finding efforts related to the LGBTQ discrimination complaint. She asked the Board for a written decision on this request.

BROWN ACT BRIEFING

Attorney Saji T. Pierce presented the annual Brown Act and ethics update. She highlighted the Ethics Policy of the EBMUD Board of Directors (Policy 6.04) and the laws covered by this policy. She summarized recent legal developments in the areas of The Brown Act, the Public Records Act, Conflict of Interest Code, Government Code 1090 pertaining to public officials' approval of contracts, and the Political Reform Act. She presented the Board with copies of the documents related to this presentation and responded to several questions raised by Board members.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Frank Mellon announced the closed session agenda. The Board convened to Conference Room 8a/b for discussion.

Regular Business Meeting

President Mellon called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, and Secretary of the District Lynelle M. Lewis.

BOARD OF DIRECTORS

President Mellon led the Pledge of Allegiance.

Election of President of the Board

President Mellon opened the floor for nominations for President of the Board for 2016.

- Motion by Director Patterson, seconded by Director McIntosh, to nominate Director Frank Mellon for President of the Board of Directors for 2016.

President Mellon called for additional nominations, none came forward, and he closed the nomination period. The motion to elect Director Frank Mellon as President of the Board of Directors for 2016, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 001-16 – Elected Director Frank Mellon as President of the Board of Directors for 2016.

Election of Vice-President of the Board

President Mellon opened the floor for nominations for Vice-President of the Board.

- Motion by Director Mellon, seconded by Director McIntosh, to nominate Director William B. Patterson for Vice-President of the Board for 2016.

President Mellon called for additional nominations, none came forward, and he closed the nomination period. The motion to elect Director William B. Patterson as Vice-President of the Board of Directors for 2016, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 002-16 – Elected Director William B. Patterson as Vice-President of the Board of Directors for 2016.

Committee Assignments

President Frank Mellon announced that a memorandum regarding 2016 Committee Assignment preferences had been provided. He requested that Board members submit their committee assignment preferences to Secretary Lewis, and said that committee assignments will be presented for Board approval on January 26.

PRESENTATIONS

On behalf of the Board, President Mellon acknowledged Director Linney for 15 years of service and Director Coleman for 25 years of service to the District. He highlighted their numerous contributions to the Board and their communities. After presenting their service awards, the Board and staff applauded Directors Linney and Coleman on these milestones.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following persons: 1) Kristie Lavelle, Clean Water California, commented that treatment chemicals contribute to arsenic levels in drinking water supplies and noted her appreciation for the addition of the infant formula warning to the water quality statement; 2) Lee Ko, Bay Area Fluoride Awareness Coalition, commented on her frustration to obtain drinking water quality information, said that EBMUD's claim that it's water supply "meets or surpasses all state and federal regulatory requirements and standards" should be removed, and requested that a list of water quality reports be placed on the EBMUD website similar to that of Santa Clara Valley Water District; and 3) Lindsay Vurek, EBMUD ratepayer, commented that the level for measuring arsenic in drinking water should be lowered, staff should publish this information online, and staff should correct the online water treatment diagram to include the fluoridation process.

General Manager Coate directed the Board's attention to a January 7, 2016 Information Memo to the Board regarding Dr. Ko's public records request for the methodology of calculating the concentration of arsenic in the drinking water resulting from the use of fluoride. Dr. Ko was provided a copy of this memorandum. President Mellon noted that the District mails the Annual Water Quality Report to all ratepayers, and General Manager Coate said it is prepared in compliance with state regulations. Dr. Ko said she wants more detail (i.e. monthly reports). Staff will provide a memorandum to the Board in response to the commenters.

CONSENT CALENDAR

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Items 1-7 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 003-16** – Approved the Regular Meeting Minutes of December 8, 2015.
 2. The following correspondence was filed with the Board: 1) Memorandum (with attachments) dated January 12, 2016 to EBMUD Board of Directors, from LGBTQ Pride Month Committee Co-Chairs M. Rosa Merced, Rachel Garza, and Rene Anglo, regarding Non Exempt Staff – Conflict of Interest – LGBTQ Discrimination Complaint; 2) Presentation entitled “Annual Brown Act and Ethics Update,” dated January 2016; 3) Booklet entitled “Annual Brown Act & Ethics Update” dated January 2016; 4) Article entitled “Treatment Chemicals Contribute to Arsenic Levels” along with a Fact Sheet on Fluoridation Products from NSF submitted by Kristie Lavelle; 5) Letter dated January 11, 2016 to EBMUD Board of Directors from Lee Ko, PhD, regarding a request for EBMUD to provide additional information on drinking water quality along with a fact sheet from Santa Clara Valley Water District System #4310027 dated Wednesday, November 18, 2015; 6) Memorandum dated 1/12/16 to All EBMUD Board of Directors, from Lindsay Vurek, EBMUD rate payer, regarding measurement of arsenic levels along with a document outlining the process for adding chemicals to the water supply; 7) Memorandum dated January 7, 2016, to Board of Directors from Michael J. Wallis, Director of Operations and Maintenance, regarding Request from Dr. Ko Regarding Arsenic Levels; 8) Memorandum dated January 12, 2016, to Board of Directors from Marlaigne Dumaine, Manager of Legislative Affairs, regarding SB 814 (Hill) – Excessive Water Use; 9) Presentation entitled “Chabot Dam Seismic Improvement Pilot Project Labor Agreement” dated January 12, 2016; 10) Document entitled “Pilot Project Labor Agreement for the Chabot Dam Seismic Upgrade Project;” 11) Email dated January 10, 2016, to Board of Directors from Eric Christen, Executive Director, Coalition for Fair Employment in Construction regarding Your PLA is Union Sanctioned Discrimination; 12) Presentation entitled “Water Supply Board Briefing,” dated January 12, 2016; and 13) Memorandum dated January 12, 2016, to Board of Directors from Eileen M. White, Manager of Water Operations, regarding Freeport Regional Water Authority (FRWA) January 14, 2016 Board of Directors Meeting.
 3. **Motion No. 004-16** – Awarded a contract to the lowest responsive/responsible bidder, BASF Corporation, in an annual amount, after the addition of taxes, not to exceed \$120,242 for supplying polymeric flocculants for the Main Wastewater Treatment Plant’s thickening process for two years, beginning on or after February 1, 2016, with three options to renew for an additional 1-year period for a total cost of \$601,210 under Request for Quotation No. 1602.
 4. **Motion No. 005-16** – Awarded a contract to the lowest responsive/responsible bidder, Coast Counties Truck & Equipment Company, in the total amount of \$598,706.58, after the addition of taxes, for supplying two scoop trucks to the District under Request for Quotation No. 1609.

5. **Motion No. 006-16** – Awarded a contract to the lowest responsive/responsible bidder, Manito Construction, Inc., in the amount of \$1,780,880 for construction of the Main Wastewater Treatment Plant Hypochlorite Piping Replacement Phase 1 and Tank Relining Project under Specification SD-350.
6. **Motion No. 007-16** – Authorized an agreement beginning on or after January 12, 2016 with Brown and Caldwell in an amount not to exceed \$400,000 for design services for a new digester gas management system and integration of a new compressed natural gas facility for the Main Wastewater Treatment Plant Digester System Design Support for Food Waste Project.
7. **Motion No. 008-16** – Adopted the 2016 Diversity and Inclusion Program.

DETERMINATION AND DISCUSSION

8. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine highlighted the proposed legislative initiatives for 2016.

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

Motion No. 009-16 – Approved the federal legislative initiatives for 2016 which focus on: 1) seeking federal funding opportunities for EBMUD projects via any new and existing federal programs; 2) advancing EBMUD's interests in the context of federal drought legislation; 3) advancing EBMUD's Delta needs; and 4) continuing to investigate federal efforts to promote healthy forests and watersheds and identifying opportunities for EBMUD to engage.

There was Board discussion about wildfire management initiatives, and the Board urged staff to coordinate these initiatives with the Upper Mokelumne River Water Authority. The Board requested an update on the Bay Area Regional Reliability Study at the upcoming Long-Term Water Supply workshop.

Next, Ms. Dumaine reported that on January 4, 2016 Senator Hill introduced SB 814 to require water agencies to adopt and implement an excessive use ordinance during those periods when the Governor declares a drought state of emergency. Ms. Dumaine pointed out that while this measure is loosely based on EBMUD's Excessive Water Use Penalty Ordinance, there are stark differences between the two. Staff is currently evaluating the bill and will bring an analysis to the Board. In concluding, Ms. Dumaine provided an update on water bond proposals, reported that Assemblymember Anthony Rendon was elected Speaker of the California Assembly and will assume office March 7, and announced that the Governor's Proposed 2016-17 Budget was released January 7.

9. **Approve A Pilot Project Labor Agreement (PLA) and Inclusion of the PLA In the Bid Package for Construction of the Chabot Dam Seismic Improvement Project.**

Engineering Manager Jimi Yoloye presented an update on negotiations with the Alameda County Building Trades Council (ACBTC) for a pilot PLA. He highlighted key terms and conditions of the PLA which focused on covered work, workforce and subcontractors, along with contract equity and local hire provisions. He pointed out that both the District and the ACBTC made compromises to reach an agreement and summarized the key areas of disagreement and their resolution. These included payment of dual benefit payments by non-union contractors, Benefit Trust Fund contributions by non-union workers, use of core workers, and local hire. Upon approval of the PLA, the next steps are for execution by the ACBTC on January 15, adding the executed PLA to bid documents on January 20, pre-bid conference on January 21, bid opening on February 10, and contract award on March 8. The Board expressed its thanks for staff's work on developing the PLA.

- Addressing the Board were the following persons: 1) Nicole Goehring, Associated Builders and Contractors – Northern California, urged the Board not to accept the PLA citing increased costs to contractors, unfair core workforce provisions, unfair pension and benefit provisions, lack of monitoring and compliance of prevailing wages, and loss of pension benefits to workers; 2) Eric Christen, Coalition for Fair Employment in Construction, opposed the PLA and said dual benefit contributions and the core workforce provisions are discriminatory and are designed to dissuade non-union contractors from bidding; and 3) Andreas Cluver, Alameda County Building Trades Council, commented that lots of concessions were made to carve out the proposed PLA language; however, he expressed concerns about the way Public Contract Code 2500(c) has been included in the agreement along with payment of initiation fees. He urged the Board to allow additional modifications on these two issues.

There was a question and answer period about payment into the union fund, interpretation of Public Contract Code 2500(c), monitoring of prevailing wage compliance, and the local hire provision. After substantial discussion by the Board, there was consensus to move forward and continue to refine certain elements of the PLA. It was noted that this project is a pilot and approval does not set precedence for PLAs on future District projects. The Board requested a written update on project costs for the pilot PLA for future consideration.

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

Motion No. 010-16 – Approved a pilot Project Labor Agreement (PLA) outlining roles and responsibilities for the District, contractors and labor unions and authorized inclusion of the executed pilot PLA in the bid package for construction of the Chabot Dam Seismic Improvement Project, provided that doing so would not adversely impact the scheduled bid opening date.

10. **Board's Annual Review of Directors' Compensation.**

- Motion by Director Katz, seconded by Director Patterson, that effective February 1, 2016, the Board's monthly compensation be increased by \$32 a month or 2.7 percent, which will result in the Board's monthly compensation changing from \$1,186 to \$1,218, carried (6-1) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (Coleman); ABSTAIN (None); ABSENT (None).

Motion No. 011-16 – Approved increasing the Board's monthly compensation effective February 1, 2016 by \$32 a month or 2.7%, which will result in the Board's monthly compensation changing from \$1,186 to \$1,218.

11. **General Manager's Report.**

Manager of Water Operations Eileen M. White presented updates on state and District water supplies, the Freeport supplemental water deliveries, water supply projections, and the El Nino outlook for 2016. Next, General Manager Coate announced the following staff reports had been provided for the Board's information: 2016 Critical Drought Action Plan Update; Monthly Report – December 2015; Six-Month Forecast of Board Committee and Workshop Agenda Topics and Summary of 2015 Committee and Workshop Topics; and 2015 Interdepartmental Committees Annual Reports.

Director Coleman urged staff to submit comments for the State Water Board hearings in February so the District's efforts in diversifying its water supply portfolio can be acknowledged. Director Young asked if the District can make water transfers in the event it has above average water supply. General Manager Coate said our policy allows this, in times of surplus, but there is a long process which needs to be done thoughtfully. Director Coleman asked if EBMUD can wheel water through Freeport to assist other agencies. General Manager Coate said staff will look into the terms of our water rights contracts. Director Patterson suggested connecting with environmental groups to assist with monitoring cyclists on EBMUD trails. President Mellon said he would be requesting an environmental impact report on the pilot study for bicycle access to EBMUD trails in addition to an analysis of EBMUD's liability. Director Linney asked about continued customer notification of the excessive use penalty and staff said a report on the findings would be presented to the Board at a future meeting.

REPORTS AND DIRECTOR COMMENTS

12. **Committee Reports.**

- Filed with the Board were the Planning and Legislative/Human Resources Committee Minutes of December 8, 2015.

13. **Other Items for Future Consideration.**

- At the request of Director Young, staff will provide an information memo on the District's effort in coordinating with local and regional agencies on legislative initiatives that relate to our core business.
- At the request of Director Katz, staff will provide information memos on microplastics in Bay Area waters and local fire agency coordination efforts.

14. **Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA Article X Amendment meeting on December 9 in Sacramento; ACWA Carlsbad Desalination Opening event on December 14 in Carlsbad; ACWA Executive Committee teleconference meeting on December 14; ACWA Executive Committee teleconference meeting on December 15; ACWA staff luncheon on December 16 in Sacramento; ACWA Executive Committee teleconference meeting on December 21 in Oakland; ACWA Executive Committee teleconference meeting on January 4 in Oakland; Economic Development Alliance Legislative Committee meeting on January 7 in Oakland; Contra Costa County Mayors' Conference on January 7 in San Ramon; and Contra Costa County Grand Jury meeting on January 11 in Martinez. He reported on plans to attend/participate in the following upcoming events: ACWA Executive Committee teleconference meeting on January 12 in Oakland; Freeport Regional Water Authority meeting on January 14 in Oakland; ACWA Executive Committee teleconference meeting on January 19 in Oakland; East Bay Leadership Group on January 20 in Concord; Upper Mokelumne River Water Authority Board meeting on January 22 in Pardee; and ACWA Executive Committee teleconference meeting on January 25 in Oakland.
- Director Katz reported attending the Alameda County Community Choice Energy Steering Committee meeting on January 6 in Castro Valley.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Patterson announced that the Landmark Advisory Board renamed a portion of 37th Street (between MacArthur Boulevard and Telegraph Avenue) in Oakland to Aramis Fouche Way (founder of Fouche's Funeral Home).
- Director Young had no comment.
- President Mellon had no comment.

ADJOURNMENT

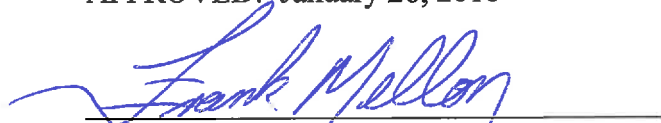
President Mellon adjourned the meeting at 3:43 p.m.

SUBMITTED BY:



Lynelle M. Lewis, Secretary of the District

APPROVED: January 26, 2016



Frank Mellon, President of the Board

