

MINUTES

Tuesday, December 8, 2020

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

Regular Closed Session Meeting

President Marguerite Young called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 a.m. She 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, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call (remotely).

Staff participants included General Manager Clifford C. Chan, General Counsel Craig S. Spencer, Attorney Derek T. McDonald (Items 1a, 1b, and 1c), Risk Management Analyst Kim A. Damico (Items 1a and 1b), Workers Compensation Manager and Risk Specialist Penny Terry (Items 1a and 1b), Assistant General Counsel Fred S. Etheridge (Items 1c and 2), Director of Water and Natural Resources Michael T. Tognolini (Items 1c and 2), Engineering Manager Lena L. Tam (Items 1c and 2), and Environmental Affairs Officer Jose D. Setka (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following persons: 1) George Cleveland, Chief Steward, AFSCME Local 2019 commented on the pending personnel action regarding an employee who has been off work since being robbed and assaulted while collecting payments in the field in 2019; and 2) Eric Larsen, President, AFSCME Local 444, thanked the Board for extending the Families First Coronavirus Response Act leave through June 2021, and commented on District plans for COVID-19 testing and vaccines.

The Board requested additional information regarding the pending personnel action.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Young called to order the Regular Business Meeting of the Board of Directors at 1:19 p.m. She 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, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call (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 Young led the Pledge of Allegiance.

PRESENTATION

Director Frank Mellon announced the District received the Association of California Water Agencies' Huell Howser Best in Blue Award: Achieving Communications Excellence for its communications campaign in 2019 to prepare District customers for PG&E's public safety power shutoffs (PSPS). Director Mellon highlighted some of the creative techniques used to reach customers, including a public outreach campaign launched in summer 2019 in advance of the fall 2019 PSPS events. The Board viewed the acceptance speech video by Public Affairs staff which was presented at the ACWA virtual fall conference. The Board thanked staff for their continued work to address PSPS events.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

Addressing the Board were the following persons: 1) Larry Theis, City of Orinda Assistant City Manager/Director of Public Works commented on the City's written comments regarding the Final Supplemental Environmental Impact Report for the District's Orinda Water Treatment Plant Disinfection Improvements Project (Agenda Item 12); and 2) Joey D. Smith, President, AFSCME Local 2019 thanked the Board for its leadership over the past year and said Local 2019 looks forward to continuing to work with staff and the Board in the coming year.

CONSENT CALENDAR

- Motion by Director Coleman, seconded by Director McIntosh, to approve the recommended actions for Items 1-10 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 222-20** – Approved the Regular Meeting Minutes of November 24, 2020.
 2. The following correspondence was filed with the Board: **1)** Letter dated December 7, 2020, to EBMUD Director Marguerite Young Ward 3 and Board of Directors from Larry Theis, City of Orinda Assistant City Manager/Director of Public Works, regarding Follow up Comments from City of Orinda on Final Supplemental Environmental Impact Report for the Orinda Water Treatment Plant Disinfection Improvements Project; **2)** Presentation entitled, “Orinda Water Treatment Plant Disinfection Improvements Project Final Supplemental Environmental Impact Report and Project Approval,” dated December 8, 2020; **3)** Presentation entitled, “Adopt a Resolution Authorizing the Use of Flow Restrictors,” dated December 8, 2020; **4)** Presentation entitled, “Coronavirus Update,” dated December 8, 2020; **5)** Presentation entitled, “Racial Equity and Justice and Diversity, Equity and Inclusion Strategic Plan Projects Update,” dated December 8, 2020; and **6)** Speakers’ Bureau and Outreach Record CY20, dated December 7, 2020.
 3. **Motion No. 223-20** – Awarded contract to the lowest responsive/responsible bidder, ERA Construction Inc., in the amount of \$980,000 for construction of North Richmond Water Reclamation Plant Facility Improvements Phase 2 under Specification SD-405.
 4. **Motion No. 224-20** – Awarded a contract to the lowest responsive/responsible bidder, Innovative Construction Solutions, in the amount of \$792,100 for construction of Main Wastewater Treatment Plant Process and Gas Piping Replacement under Specification SD-426.
 5. **Motion No. 225-20** – Authorized an agreement beginning on or after December 8, 2020 with Trussell Technologies, Inc. in an amount not to exceed \$1,445,316 for design services for the Water Quality Research Facility.
 6. **Motion No. 226-20** – Authorized an agreement beginning on or after December 8, 2020 with The Tharpe Company, Inc. dba Engage2Excel in an amount not to exceed \$65,000 for one year for services that support the District’s Employee Recognition and Appreciation Program.
 - 7.1. **Motion No. 227-20** – Authorized an amendment to the agreement previously authorized under Board Motion No. 190-17 with Denali Water Solutions, LLC to increase the agreement amount by \$1,870,000 to a total amount not to exceed \$5,470,000 and extend the agreement term to June 30, 2022 for dry weather biosolids handling services at the Main Wastewater Treatment Plant.
 - 7.2. **Motion No. 228-20** – Authorized an amendment to the agreement previously authorized under Board Motion No. 190-17 with Synagro-WWT, Inc. to increase the agreement amount by \$4,796,000 to a total amount not to exceed \$11,996,000 and extend the agreement term to June 30, 2022 for wet weather biosolids handling services at the Main Wastewater Treatment Plant.

- 8.1. **Motion No. 229-20** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed \$100,000.
- 8.2. **Motion No. 230-20** – Authorized the Office of General Counsel to continue the employment of the law firm of Meyers Nave Riback Silver & Wilson for specialized legal services related to labor and employment matters in an additional amount not to exceed \$100,000.
- 9.1- **Motion No. 231-20** – Authorized an agreement beginning on or after December 8, 2020 with
9.2. Luhdorff and Scalmanini Consulting Engineers, Inc. in an amount not to exceed \$424,376 for consulting services for the provision of monitoring well installation engineering support and the performance of aquifer testing and isotopic analysis; and directed staff not to issue any notices to proceed with optional services under the agreement until the completion of any necessary California Environmental Quality Act environmental review regarding construction of the proposed monitoring wells.
10. **Resolution No. 35209-20** – Adopting New Policy 4.28, Cybersecurity and Adopting Revised Policy 2.18, Training.

DETERMINATION AND DISCUSSION

11. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine reviewed eight State legislative initiatives for the 2021 legislative year. The initiatives represent important focus areas for EBMUD and include policy areas likely to be before the legislature that have the potential to directly affect EBMUD operations and/or policies as well as proposals for EBMUD-sponsored legislation. Ms. Dumaine noted that in addition to these specific initiatives, staff assesses all legislation throughout the year for a nexus to EBMUD operations and policy objectives and will bring relevant bills to the Board for consideration, as appropriate. Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier in the day and voted to support the recommended initiatives.

- Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented on the need for staff to lobby the State to ensure District staff is in line to receive the COVID-19 vaccine.

The Board discussed the initiatives and asked staff to provide updates to the Upper Mokelumne River Watershed Authority on forest health/wildfire prevention and water supply and reliability. They also requested that staff track workforce transition opportunities for the District as climate change potentially impacts workers in the fossil fuels industry and to monitor legislative discussions on capacity fees related to accessory dwelling unit development.

Next, Ms. Dumaine provided an update on State and federal activities, including COVID-19 relief related efforts, staff's monitoring of discussions regarding PFAS, status of current statutes regarding accessory dwelling units, the WIIN Act, and WRDA.

- Motion by Director Coleman, seconded by President Young, to approve the recommended actions for Item 11 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 232-20 – Approved the following State Legislative Initiatives for the 2021 Legislative Year: 1) Board Quorum – Pursue legislation to update the statutory requirements for reaching a Board quorum to declare an emergency. This is a carryover initiative from 2020; 2) Climate Change – Advance EBMUD’s interests related to climate change and climate adaptation discussions; 3) Forest Health/Wildfire Prevention – Advance EBMUD’s interests in efforts to address forest health and wildfire preparedness, response, and recovery in the context of water service. This is an ongoing initiative; 4) Housing Fees – Seek constructive ways to protect and advance EBMUD’s interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Low-Income Ratepayer Assistance – Seek constructive ways to advance EBMUD’s interests as the administration and the legislature consider ways to provide assistance to low-income water customers; 6) Racial Equity and Justice – Look for opportunities to advance EBMUD’s interests, as outlined in the June 2020 Board resolution, as the legislature continues to consider ways to address racial equity and justice issues; 7) Wastewater Discharge – Advance EBMUD’s interests in any efforts to eliminate or reduce the discharge of treated wastewater to the ocean and bays. This is a carryover initiative from prior years; and 8) Water Supply and Reliability – Protect and advance EBMUD’s interests in the context of its water supply reliability and the Mokelumne River fishery as the administration and legislature continue to contemplate water, endangered species, and Bay-Delta issues. This is an ongoing initiative.

12a- **Certifying the Final Supplemental Environmental Impact Report (SEIR) for the Orinda**
12d. **Water Treatment Plant (WTP) Disinfection Improvements Project, Making Findings, Adopting the Mitigation Monitoring and Reporting Plan, and Approving the Project.**

Associate Civil Engineer Chien Wang presented an update on the project and the project’s Final SEIR. Ms. Wang said components of this project were included in the EIR for the District’s 2006 Water Treatment and Transmission Improvements Program. Staff prepared a Draft SEIR for the project and released it in July 2020. The project’s purpose is to improve the disinfection process and reliability at the Orinda WTP, ensure continued compliance with water quality regulations, reduce the formation of disinfection byproducts, improve chemical dosing, and reduce disinfection complexity. She reviewed the project site plan, construction staging area locations, and findings from the Draft SEIR. During public outreach meetings, staff responded to community comments focused primarily on landscaping, construction traffic, noise and dust, hours and staging areas. These comments were addressed in the Final SEIR. She discussed key mitigation measures, additional design services requirements, and comments, including the comment letter submitted by the City of Orinda. Based on the City’s comments, the Manzanita East staging area was removed from the project and relocated within the Orinda WTP settling ponds. Ms. Wang noted there were no other substantial changes to the Draft SEIR and that the City’s comments were addressed in the Final SEIR. If the Board approves the project and certifies the Final SEIR, design will be completed in 2021 and project construction will occur from 2022 through 2026. The Board encouraged staff to continue partnering with the City to address issues that may arise during the project.

12a. Certify the Final Supplemental Environmental Impact Report for the Orinda Water Treatment Plant Disinfection Improvements Project (Project).

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

12b. Make findings in accordance with the California Environmental Quality Act.

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

12c. Adopt the Mitigation Monitoring and Reporting Plan in accordance with California Environmental Quality Act.

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

12d. Approve the Project.

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

Resolution No. 35210-20 – Certifying the Final Supplemental Environmental Impact Report for the Orinda Water Treatment Plant Disinfection Improvements Project, Making Findings, Adopting the Mitigation Monitoring and Reporting Plan, and Approving the Project.

13. Authorize the Use of Flow Restrictors to Enforce the Payment of Delinquent Accounts for Single Family Residences.

Manager of Customer and Community Services Andrew L. Lee summarized previous staff presentations and Board discussions on the proposal to incorporate flow restrictors into the District's payment collection process for single-family residential (SFR) customers to address delinquent accounts. Based on Board feedback during October 27 and November 24 Board meetings, a resolution was drafted that authorizes staff to develop a plan to incorporate flow restrictors into the District's payment collection process as an alternative to water shutoffs. Mr. Lee reviewed the principles in the resolution and said if approved, staff will engage stakeholders and government agencies, and present an implementation plan at the February 2021 Customer Assistance Program Workshop. Implementing flow restrictors would begin following the lifting of the governor's emergency declaration and after additional outreach to the affected customers. The Board commented on the proposal and overall expressed support for the resolution. They thanked staff for their efforts to develop an alternative approach to address delinquent accounts and water shutoffs and asked for an evaluation of options to minimize the impact of fixed charges on customers who have flow restrictors installed. President Young also asked staff to

check on grants currently being offered by the City of Oakland to help residents impacted by COVID-19 pay utility bills.

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

Resolution No. 35211-20 – Authorize the Use of Flow Restrictors to Enforce the Payment of Delinquent Accounts for Single Family Residences.

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

Coronavirus Update.

Director of Operations and Maintenance David A. Briggs presented an update on the State's latest regulations and vaccine distribution plan, as well as the regional stay-at-home order issued on December 3. He reviewed the counties' risk tiers as of December 4, number of District employees and contractors that have tested positive and the District's most recent COVID-19-related leave statistics. Mr. Briggs responded to Board questions regarding proposed vaccination requirements at the District, quarantine requirements for employees or others who may have come in close contact or been exposed to an employee or contractor with COVID-19, and statistics on the number of employees that have returned to work or been hospitalized after testing positive.

- Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented on the increase in COVID-19 cases, COVID-19 testing at the District, the COVID-19 contact tracing app, and the District's plans for staff in light of the latest shelter-in-place orders.

The Board asked that future updates include data on the number of employees that have returned to work after being diagnosed with COVID-19 or who are required to quarantine due to exposure to COVID-19, and for staff to provide a summary of the District's vaccine plan and additional employee safety measures.

Racial Equity and Justice (REJ) and Diversity, Equity, and Inclusion Strategic Plan Projects Update.

Manager of Employee and Organizational Development Derry L. Moten provided updates on both projects. Staff has participated in discussions with the California Urban Water Agencies' (CUWA) Diversity, Equity, and Inclusion Committee and as panelists in BAYWORK's Training Buffet workshop on *Racial Equity in our Industry*. The District's Diversity Committee has been expanded to include members from all Affinity Groups and other District committees and stakeholder groups with a goal to expand discussions beyond race and gender. Mr. Moten reviewed the status of the work completed by task forces working on REJ Strategies 1, 6, 7 and 8; Core Team and senior management training activities; updates to internal trainings based on feedback from The Winters Group; the overall project schedule; and upcoming activities. Staff will continue training efforts; participating on the CUWA Committee; and implementing recommendations for REJ Strategies 1 and 6 and work on Strategies 7 and 8. The Winters Group

will provide preliminary findings of their internal assessment and will work with staff to begin development of the Strategic Plan for Diversity, Equity and Inclusion by March 2021. Mr. Moten responded to Board questions regarding resources for the projects and when The Winters Group data would be available for Board review.

General Manager Clifford C. Chan announced he was available to answer questions on information contained in the November 2020 Monthly Report. The Board requested additional information on the District's total billed water consumption versus revenue collected.

- President Young left the meeting at 3:40 p.m.; Vice-President Linney began chairing the meeting.

REPORTS AND DIRECTOR COMMENTS

15. Committee Reports.

- Filed with the Board were the November 24, 2020 Finance/Administration Committee Minutes.
- Planning Committee Chair Doug Linney reported the Committee met earlier in the day (via teleconference) and received updates on the following: Orinda Water Treatment Plant Disinfection Improvements Project and Final Supplemental Environmental Impact Report; Wastewater Pretreatment and Pollution Prevention Programs; Facility Landscape Maintenance; and a review of Policy 4.28 – Cybersecurity (new) and revisions to Policy 2.18 – Training.
- Legislative/Human Resources Chair John A. Coleman reported the Committee met earlier in the day (via teleconference) and received updates on the following: State Legislative Initiatives for 2021 Legislative Year; Legislative Issues of Interest to EBMUD; and the Fiscal Year 2020 Contract Equity Program Annual Report.

16. Other Items for Future Consideration.

None.

17. Director Comments.


- Director Coleman reported participating as a panelist (remotely) at the WaterReuse NorCal Chapter Meeting on December 4. He acknowledged Community Affairs Representative II Benjamin Glickstein for his assistance on the speaking materials. He also reported on plans to send congratulatory letters to officials in Ward 2 who were elected or re-elected/re-appointed during the November 3 election.
- Director Mellon reported participating in an ACWA diversity event and thanked Public Affairs staff and the General Manager for assisting with the speaking materials.

- Director Patterson wished staff a Merry Christmas and Happy New Year.
- Directors Katz, Linney, and McIntosh, and President Young had no report.

ADJOURNMENT

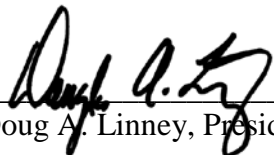
Vice-President Linney adjourned the meeting at 3:45 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: January 12, 2021



Doug A. Linney, President of the Board