

MINUTES

Tuesday, March 24, 2020

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

Regular Closed Session Meeting

President Marguerite Young called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Building Board Room. She announced that in light of the COVID-19 pandemic, the meeting will be conducted pursuant to California Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act and allows Board members and the public to participate telephonically while Social Distancing Requirements are in effect.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Attorney Lourdes Matthew (Item 1), Director of Operations and Maintenance Clifford C. Chan (Item 1), and Manager of Human Resources Laura A. Acosta (Item 1).

PUBLIC COMMENT

The following persons addressed the Board: 1) Gus Cicala, Treasurer, AFSCME Local 2019 (telephonically), commented on the District's response to the COVID-19 pandemic and urged the Board to direct staff to finalize a telecommuting program for staff and to authorize paid administrative leave for staff unable to perform their duties telecommuting; 2) Wendy Ibarra, Officer, AFSCME Local 2019 (telephonically), commented on telecommuting for Dispatch Center staff; 3) Dwight George, EBMUD Maintenance Shift Supervisor, commented on current working conditions, personal protective equipment, and sanitation supplies for field forces; 4) Gistand Williams Jr., EBMUD General Pipe Supervisor, commented on the District's response to the COVID-19 pandemic and current working conditions and sanitation supplies for field forces; 5) Eric Larsen, President, AFSCME Local 444 commented on the District's response to the COVID-19 pandemic and urged the Board to authorize paid administrative leave during the current shelter in place order and hazard premium pay for employees required to work; and 6) Joey D. Smith, President, AFSCME Local 2019, commented on the District's response to the COVID-19 pandemic and urged the Board to authorize paid administrative leave during the current shelter in place order.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Young announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

Regular Business Meeting

At 1:32 p.m. President Young informed Secretary Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 2:30 p.m.

President Young called to order the Regular Business Meeting of the Board of Directors at 2:31 p.m. in the Administration Building Board Room. She announced that in light of the COVID-19 pandemic, the meeting will be conducted pursuant to CA Executive Order N-29-20 which suspends certain requirements of the Ralph M. Brown Act and allows Board members and the public to participate telephonically while Social Distancing Requirements are in effect.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Young led the Pledge of Allegiance.

PRESENTATION

General Manager Alexander R. Coate announced the District received the National Association of Clean Water Agencies' Public Service Award for the Employee/Retiree Coastal Cleanup Day Event. The event was held on September 21, 2019 at the Martin Luther King Jr. Shoreline Regional Park in Oakland in collaboration with the East Bay Regional Park District and nationwide cleanup events. The award recognizes the District for demonstrating exemplary commitment and service to the community and the environment. The following staff were recognized for their organization of, and participation in, the 2019 Coastal Cleanup Day event: Maura Bonnarens, Treatment Division Manager; Laurice Brown, Wastewater Control Representative; Alicia Chakrabarti, Environmental Services Division Manager; Kristen Font, Wastewater Control Representative; Phoebe Grow, Supervising Wastewater Control Representative; James Hake, Assistant Engineer; Matilda Leong, Senior Administrative Clerk; Sherricka Love, Janitor; Aaron McClain, Senior Administrative Clerk; Sandra Mulhauser, Associate Civil Engineer; Danny Pham, Senior Software Engineer; Stella Tan, Associate Civil Engineer; Jenny Tran, Associate Civil Engineer; Bonnie Yee, Administrative Assistant; and Darryl Yee, Associate Electrical Engineer. The Board applauded and thanked staff for their work.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

There was no public comment.

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 roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 051-20** – Approved the Regular Meeting Minutes of March 10, 2020.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Water Supply Update,” dated March 24, 2020; **2)** Presentation entitled, “Railroad Property Acquisition, Public Hearing,” dated March 24, 2020; **3)** Presentation entitled, “Coronavirus Update,” dated March 24, 2020; and **4)** Speakers’ Bureau and Outreach Record CY20, dated March 23, 2020.
 3. **Motion No. 052-20** – Awarded a contract to CXT Incorporated in an amount not to exceed \$251,028 for the removal of eight existing wood-frame restrooms and the installation of three new pre-fabricated concrete restrooms at Lafayette Reservoir Recreation Area.
 - 4.1-4.2. **Motion No. 053-20** – Awarded contracts to the nine lowest responsive/responsible bidders – Bradley Tanks, Inc.; Buildingpicks, Inc. dba Rockery; Cemex; CM Excavating, Inc.; Darrah Trucking & Excavating, Inc.; Green Dream International LLC; Sky Rock, Inc.; S.N. Sands Corp. dba S&S Trucking; and Toby’s Trucking in an aggregate annual amount, after the addition of taxes, not to exceed \$9,189,093 for supplying backfill material to locations throughout the District for three years, beginning on or after March 24, 2020, with two options to renew for additional one-year periods for a total cost of \$45,945,465 under Request for Quotation No. 2006; and authorized additional contracts with qualified bidders that meet District standards and offer pricing at or below the range described in the current proposed contracts to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.
 5. **Motion No. 054-20** – Approved the February 2020 Monthly Investment Transactions Report.
 6. **Resolution No. 35167-20** – Authorize Purchase from John Naylor of 25.65 Acres Located at 11 Bearinda Lane, Orinda.
 7. **Resolution No. 35168-20** – Adopting Revised Policy 2.03, Performance Management; Revised Policy 4.14, Reimbursement of Director Expenses; Revised Policy 7.03, Emergency Preparedness/Business Continuity; Revised Policy 8.03, New Wastewater Service Connections During Restricted Periods; and Revised Policy 9.05 – Non-Potable Water.

PUBLIC HEARING

8.1. **Conduct a public hearing to receive comments on a Resolution of Necessity to acquire fee property rights for the property adjacent to 2430 Willow Street in Oakland, site of the new Central Area Service Center.**

President Young opened the public hearing at 2:42 p.m.

Manager of Customer and Community Services Andrew L. Lee presented an overview of the District's efforts to acquire fee property rights through the eminent domain process for a 0.157-acre vacant and unused railroad parcel adjacent to 2430 Willow Street in Oakland. The District selected the Willow Street property because of the potential to acquire the railroad parcel. The railroad parcel is adjacent to Mandela Parkway, not contiguous to an existing railway, and does not appear to have a viable railroad function. If left undeveloped, it would create a security gap between the Willow Street property and neighboring structures. He explained incorporating the adjacent railroad parcel as part of the Central Area Service Center development is essential to ensure the usability of existing infrastructure, ensure there is adequate space within the property to accommodate the ingress/egress of large trucks, ensure employees' safety, and improve overall vehicle flow. Staff negotiated an agreement with Union Pacific Railroad Company and drafted a purchase agreement for the railroad parcel in March 2019, but the railroad company opted not to follow through with the agreement. In December 2019, the District provided final written offers to Burlington Northern Santa Fe Railway and Union Pacific Railroad Company (Railroads), based on fair market value as determined by a third party appraisal. To date, the Railroads have not accepted the offers. The District sent the Railroads notice of the public hearing and Board meeting by Federal Express on March 5, 2020. Under Agenda Item 8.2, the Board will be asked to consider adopting a Resolution of Necessity for eminent domain proceedings to acquire the fee property rights from Burlington Northern Santa Fe Railway and Union Pacific Railroad Company and authorizing the General Counsel to file eminent domain actions in Alameda County Superior Court. Planning Committee Chair Doug Linney announced this item was presented to the Committee on March 10, 2020 and the Committee supported the staff recommendations.

President Young asked for comments from representatives of the Railroads or other interested persons from the public. There were no comments.

President Young asked for a motion to close the public hearing. Director Patterson motioned to close the public hearing at 2:51 p.m.

- Motion by Director Patterson, seconded by Director Linney, to close the public hearing at 2:51 p.m., carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 055-20 – Conducted a public hearing to receive comments on a Resolution of Necessity to acquire fee property rights for the property adjacent to 2430 Willow Street in Oakland, site of the new Central Area Service Center.

- 8.2. **Resolution No. 35169-20** – Resolution of Necessity for the Acquisition by Eminent Domain of a Fee Interest in the Burlington Northern Santa Fe Railway Property Adjacent to 2430 Willow Street in Oakland, California, and Authorizing Condemnation Proceedings.

DETERMINATION AND DISCUSSION

- 9a-9b. **Approve implementation of the fourth year general salary increase of 3.0% in accordance with the 2017-2021 Memoranda of Understanding between the District and AFSCME Locals 2019 and 444, IUOE Local 39 and IFPTE Local 21; and authorize a 3.0% general salary increase for Senior Management Team Members, Managers, Confidential employees and other Non-Represented employees in accordance with Resolution No. 35074-18. For purposes of Section 54953(c)(3) of the Brown Act, Senior Management Team Members referenced herein include: General Manager, General Counsel, Secretary of the District, Director of Engineering and Construction, Director of Finance, Director of Operations and Maintenance, Director of Wastewater, Director of Water and Natural Resources, Manager of Customer and Community Services, Manager of Human Resources, Special Assistant IV (Legislative Affairs), and Special Assistant IV (Public Affairs).**

President Young announced that pursuant to Section 54953(c)(3) of the Government Code, the Board of Directors is providing an oral report prior to taking action on the salary, salary schedule and compensation paid in the form of fringe benefits to the members of the Senior Management Team listed below, including the General Manager and the General Counsel. In accordance with the employment agreements with the General Manager and the General Counsel, the Board may authorize the same general salary increases and benefits to the General Manager and the General Counsel as that granted to District employees at the department director level. As such, it is recommended that the General Manager and the General Counsel each receive a 3.0% increase in their annual salary, commensurate with the 3.0% increase being granted to all District employees in this action, effective April 13, 2020. The 3.0% increase consists of a cost-of-living increase of 2.5% based on the Consumer Price Index and an additional 0.5% enhancement. Additionally, it is recommended that the following members of the Senior Management Team also be granted a 3.0% increase in their current annual salary, commensurate with the increase being granted to all District employees in this action, effective April 13, 2020: Secretary of the District; Manager of Customer and Community Services; Director of Engineering and Construction; Director of Finance; Manager of Human Resources; Director of Operations and Maintenance; Director of Wastewater; Director of Water and Natural Resources; Special Assistant IV (Legislative Affairs); and Special Assistant IV (Public Affairs). The current salaries are contained in the Salary Schedule authorized by the Board and on file with the Secretary of the District.

- Motion by Director Patterson, seconded by Director McIntosh, to approve the recommend actions for Items 9a-9b, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35170-20 – Revise District Salary Ranges, Salaries and Wage Rates.

10.1-10.2. Ratify the General Manager's March 17, 2020 declaration of a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity as a result of the federal, state, and county response to the Coronavirus disease 2019 (COVID-19); and confirm the authority of the General Manager to respond to the emergency.

Director of Operations and Maintenance Clifford C. Chan presented an overview of the District's actions in response to the COVID-19 pandemic (Agenda Item 11). He reviewed the status of confirmed COVID-19 cases in the Bay Area and the state; discussed the District's Communicable Disease Emergency Response Plan and the Emergency Operations Teams' activities; highlighted the status of publicly accessible District facilities and recreation areas; and impacts to the District's internal and external operations. He reported the District suspended water service shut-offs due to non-payment effective March 12 and began restoring water service for 500 services that have been shut-off since January 2020 due to non-payment. He discussed critical business functions; the most recent county and state shelter in place guidelines; and mitigation measures in place and being implemented for staff and District operations. Staff is working to develop plans to address employees experiencing child care challenges and reaching out to cities to coordinate a response to support the homeless community. Manager of Human Resources Laura A. Acosta reviewed current leave options available to employees and H.R. 6201 – the Family First Act. Manager of Legislative Affairs Marlaigne K. Dumaine reviewed actions taken by California Governor Newsom and at the federal level.

President Young commented on the seriousness of the current situation and its effects on all aspects of life and recalled how District staff responded to previous local disasters including the Loma Prieta earthquake and the Oakland Hills fire.

Director Mellon left the room at 3:31 p.m. and returned at 3:33 p.m.

Addressing the Board were the following persons regarding Agenda Item 11: 1) Brandon Batteate, EBMUD Plumber IV (telephonically), commented on proposed solutions for a rotation program for Operations and Maintenance Department staff until the pandemic is over; 2) George Cleveland, Chief Steward, AFSCME Local 2019 (telephonically), commented on the District's response to the COVID-19 pandemic, essential versus non-essential employees and telecommuting for staff; 3) Justin Young, 1st Vice President, AFSCME Local 2019 (telephonically), commented on the District's response to the COVID-19 pandemic, telecommuting for staff, and paid administrative leave for staff unable to perform their duties telecommuting; 4) Gus Cicala, Treasurer, AFSCME Local 2019 (telephonically), commented on telecommuting for staff, the current sick leave policy, and paid administrative leave for staff unable to perform their duties telecommuting; 5) Denise Cicala, EBMUD Associate Civil Engineer (telephonically), commented on classifying essential staff and authorizing non-essential staff to receive paid administrative leave; 6) Eric Larsen, President, AFSCME Local 444, commented on the health of some Local 444 members and the District's response to the COVID-19 pandemic; 7) Joey D. Smith, President, AFSCME Local 2019 commented on a March 23, 2020 joint letter from District unions to General Manager Alexander R. Coate and asked the District to reconsider the unions' proposals outlined in the letter; 8) Tony Martin, 2nd Vice President, AFSCME Local 444, commented on the District's response to the COVID-19 pandemic; 9) Eddie Cheung,

EBMUD Storekeeper urged the Board to take action to ensure a safe working environment for all during the COVID-19 pandemic; 10) Florentino Munoz, EBMUD Paving Raker commented on employee safety while the shelter in place order is in effect; 11) Paul Irvine, EBMUD Plumber III commented on challenges obtaining personal protective equipment and practicing social distancing while on job sites; 12) Gilbert Loreda, EBMUD Plumber III commented on flexible staffing while the shelter in place order is in effect; 13) Rochelle Verspui, EBMUD Wastewater Plant Operator II commented on authorizing paid administrative leave, challenges practicing social distancing, and the status of other water and wastewater agency staff impacted by the COVID-19; 14) Justin Hill, EBMUD Plumber III commented on concerns and challenges practicing social distancing while working; 15) Marvin Aceituno, General Equipment Mechanic, commented on challenges practicing social distancing in his work area with co-workers and vendors; 16) Evan Klein-Corman, Shop Steward, AFSCME Local 444 commented on concerns from union members and urged the Board to take action to ensure a safe working environment for all during the COVID-19 pandemic; 17) Bryan Wolverton, EBMUD Plumber III commented on challenges practicing social distancing with co-workers and the public while working; 18) Tyrell Jackson, EBMUD Plumber III commented on challenges practicing proper social distancing with co-workers and the public while working; 19) Joseph Pangelinan, Chief Steward, AFSCME Local 444 commented on the District's response to the COVID-19 pandemic and urged the Board to take action to ensure a safe working environment for all during the pandemic; and 20) Marc Carradine, President, AFSCME Local 444 commented on the District's response to the COVID-19 pandemic and District communications to employees. He urged the Board to take action to ensure the District is able to continue meeting the essential needs of the public.

There was considerable Board discussion regarding the comments received. The Board thanked staff and assured them their comments were heard. General Manager Coate expressed appreciation for staff and their comments and reiterated the mitigation measures being implemented for staff and District operations. In addition, Mr. Chan provided more detail regarding the staff rotation plan discussed in his presentation. Board members requested the following:

- Regular updates to the Board and conduct emergency Board meetings if warranted
 - Provide opportunity for staff working in the field to make safety proposals
 - Improved communication with staff regarding District plans and actions
 - Consider appointing an ombudsman to assist with communication efforts
 - Consider including union representatives on Emergency Operations Team calls
 - Ensure disinfectant and hand sanitizer is available for all staff
 - Determine if the county health department can review the District's emergency plans
 - Availability of separate vehicles for employees to travel to job sites (Director Mellon)
 - Aerosol transmission disease standards (Director Katz)
- President Young left the room at 4:47 p.m. and returned at 4:49 p.m.

Director Coleman questioned the information in the staff report for Item 10.1 and 10.2, which states Policy 7.03 – Emergency Preparedness/Business Continuity authorizes suspension of the competitive bid process and allows the General Manager to execute contracts in amounts not to exceed \$350,000 per contract. Director Coleman pointed out that under Consent Calendar Item 7, the Board approved revisions to Policy 7.03 to

increase the General Manager's spending authority from \$350,000 to \$500,000 per contract. General Manager Coate explained the report contains the \$350,000 per contract threshold because that was the authorized amount when the staff report was written. He said the written record will reflect that Policy 7.03 was revised to increase the General Manager's spending authority from \$350,000 to \$500,000 per contract.

President Young asked for a motion to approve the actions outlined in Agenda Items 10.1 and 10.2.

- Motion by Director Patterson, seconded by Director Mellon, to approve the recommended actions for Items 10.1 and 10.2, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35171-20 – Ratifying General Manager's Declaration of the Existence of an East Bay Municipal Utility District Emergency and Confirming the Authority of the General Manager to Respond to the Emergency.

- President Young left the room at 5:07 p.m. and returned at 5:11 p.m.
- Director Mellon left the room at 5:08 p.m. and returned at 5:10 p.m.

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

Director of Operations and Maintenance Clifford C. Chan provided the update on the District's response to the Coronavirus under Agenda Items 10.1 and 10.2.

Manager of Maintenance and Construction/Water Operations David A. Briggs presented the Water Supply Update which included information on the District's and California's current water supply. He reported on gross water production, the snow depth and snow water content at Caples Lake. He noted that through March 22, 2020, precipitation in the East Bay was 42% of average and 65% of average in the Mokelumne. As of March 22, the District's total system storage was 593,460 acre feet, which is 96% of average and 77% of capacity. He discussed projected total system storage through the end of Water Year 2020 and said the District continues to prepare for all possible water supply scenarios.

General Manager Coate announced the Board received a written report in their meeting materials regarding District plans to begin directly notifying customers affected by an unplanned water outage using email and text messages in April. Future plans include pushing traffic impacts to applications like WAZE; allowing customers to quickly update their contact information; and providing notifications to non-bill paying customers (e.g., those in multi-family residences). He asked the Board to contact staff if needed regarding the Speakers' Bureau and Outreach Record noted that due to the COVID-19 pandemic, many of the events listed have been canceled or placed on hold.

REPORTS AND DIRECTOR COMMENTS

12. **Committee Reports.**

- Filed with the Board were the March 10, 2020 Planning Committee Meeting Minutes.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier (via teleconference) and received updates on the following: Semi-Annual Internal Audit Report; Revisions to District Policies; the February 2020 Monthly Investment Transaction Report; and the COVID-19 Impact on the Variable Rate Debt Market.

11. **Other Items for Future Consideration.**

None.

12. **Director Comments.**

- Director Coleman reported giving a speech at a East Bay Real Estate meeting on March 12 in Danville and plans to participate in the FRWA Board meeting via teleconference on April 9.
- Directors Katz, Linney, McIntosh, Mellon, Patterson and President Young had no report.

ADJOURNMENT

President Young adjourned the meeting at 5:17 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: April 14, 2020



Marguerite Young, President of the Board