

MINUTES

Tuesday, August 24, 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 11:01 a.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

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 Derek T. McDonald, Manager of Risk Management Vladimir Bessarabov (Item 1a), Director of Engineering and Construction Olujimi O. Yoloye (Item 1b), Engineering Manager Carlton D. Chan (Item 1b), Assistant General Counsel Fred S. Etheridge (Item 2), Director of Water and Natural Resources Michael T. Tognolini (Item 2), Engineering Manager Lena L. Tam (Item 2), Assistant General Counsel Lourdes Matthew (Items 3 and 4), Director of Operations and Maintenance David A. Briggs (Items 3 and 4), Manager of Human Resources Laura A. Acosta (Items 3 and 4), Manager of Employee Relations Niger M. Edwards (Items 3 and 4), Director of Finance Sophia D. Skoda (Item 4), and Industrial Employers Distributors Association representatives Gregory Ramirez and Jeff Bailey (Item 4).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Eric O. Larsen, President, AFSCME Local 444 commented on the COVID-19 pandemic and said the union opposes the mandatory vaccination policy for employees. He asked the Board to hold off on implementing the policy to allow employees to consult with their doctors and to consider offering routine testing for unvaccinated employees in lieu of mandatory vaccinations; 2) Joseph Q. Pangelinan, Chief Steward, AFSCME Local 444 commented on the mandatory vaccination policy for employees, the number of vaccinated District employees that have contracted COVID to date, and data from the Alameda and Contra Costa counties' websites regarding COVID; 3) Zander Maverick, EBMUD employee expressed support for the Board's decision to mandate vaccines for employees, and commented on weekly testing for unvaccinated employees, and reports of insurance companies' plans to reduce or decline testing for unvaccinated people; 4) Joey D. Smith, President, AFSCME Local 2019 commented on the mandatory vaccination policy for employees and asked the Board to take a step back on mandating vaccines; 5) Brandon R. Batteate, commented on adverse effects from COVID vaccines and adverse effects and deaths

reported on the CDC website; 6) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on staff being forced to retire because of the Board's decision to mandate vaccines and asked the Board to consider impacts to staffing levels; 7) Ivette Rivera, EBMUD employee commented on District violations of the California Public Records Act in regards to Board meeting video recordings, violations of the Brown Act in regards to delays in the start times for recent Board meetings, and President Linney's statement in response to her comments during the August 10, 2021 Board meetings regarding the civil rights lawsuit filed against the District by former District attorneys Saji Pierce and Ayriel Bland; 8) Gary Walters II, EBMUD employee and ratepayer commented he agreed with comments from union leadership on the mandatory vaccination policy for employees and commented on social distancing and disinfection, the ratio of vaccinated to unvaccinated transmissions, and the number of vaccinated District employees that have contracted COVID to date; 9) Jennifer Grey, EBMUD employee commented on the mandatory vaccination policy for employees, said she feels discriminated against, and asked the Board to reconsider the policy and discuss options with staff; 10) Ausberto Beltran, EBMUD employee commented on the mandatory vaccination policy for employees, said the mandate will set a terrible precedent, and asked the Board to encourage instead of mandating employees get vaccinated; and 11) Dustin, EBMUD employee commented on the mandatory vaccination policy for employees, said some staff is feeling discriminated against, and asked the Board to reconsider mandating vaccines for employees.

President Linney thanked employees for their comments and acknowledged addressing vaccinations at the District is a challenging issue.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:18 p.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

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 Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera, EBMUD employee who commented on District violations of the California Public Records Act in regards to Board meeting video recordings, the video recording of the August 10, 2021 Board meeting posted on YouTube, and President Linney's statement in response to her comments during the August 10, 2021 Board meetings regarding the civil rights lawsuit filed against the District by former District attorneys Saji Pierce and Ayriel Bland.

CONSENT CALENDAR

- Items 1 and 7 were pulled from the Consent Calendar for discussion.
 - Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Items 2-6 and 8-10 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. 149-21** – Approved the Regular Meeting Minutes of August 10, 2021.
 - Eric O. Larsen, President, AFSCME Local 444 commented the meeting minutes did not reflect the Board's intent in Motion No. 142-21 regarding the availability of paid leave under Senate Bill 95 after September 30 for vaccinated employees required to quarantine due to exposure to COVID outside of work. He said the motion, as restated by General Manager Chan, was narrowed to only cover vaccinated employees directed to quarantine due to workplace exposure. Mr. Larsen requested the minutes be held until staff reviewed the meeting recording to confirm the intent of Board was captured as the motion was promulgated. President Linney and General Manager Chan responded the Board would discuss extending the balance of paid leave under Senate Bill 95 to vaccinated employees required to quarantine due to exposure to COVID outside of work during discussion of Agenda Item 12.
 - Motion by Director Mellon, seconded by Director Coleman to approve Item 1, as written, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
 2. The following correspondence was filed with the Board: **1)** Email dated August 22, 2021 from Gary Palhegyi, EBMUD employee to the Board of Directors opposing the District's vaccination mandate; **2)** Email dated August 23, 2021 from Michael Hartlaub, EBMUD employee in support of the District's vaccination mandate; **3)** Email dated August 24, 2021 to the Board of Directors from Gistand Williams, EBMUD employee in support of the District's vaccination mandate; **4)** Presentation entitled, "Mokelumne Aqueduct No. 2 (MOK2) Leak Emergency Declaration," dated August 24, 2021; **5)** Presentation entitled, "Coronavirus Update," dated August 24, 2021; **6)** Presentation entitled, "Los Vaqueros Reservoir Expansion," dated August 24, 2021; and **7)** Presentation entitled, "Capital Project Construction Update," dated August 24, 2021.

3. **Motion No. 143-21** – Awarded a contract to the lowest responsive/responsible bidder, Mountain Cascade, Inc., in an amount not to exceed \$7,072,886 for construction of Pump Station M Rehabilitation and Force Main Investigation under Specification SD-398.
4. **Motion No. 144-21** – Authorized an amendment to the concession contract for the San Pablo Reservoir Recreation Area previously awarded under Board Motion No. 015-21 with Ortega National Parks, LLC to extend the contract term to December 31, 2026.
5. **Motion No. 145-21** – Authorized an agreement beginning on or after August 24, 2021 with TJKM Transportation Consultants in an amount not to exceed \$85,000 for a traffic and road improvement study of Pardee Dam Road.
6. **Motion No. 146-21** – Authorized agreements with Backstrom McCarley Berry & Co. LLC and Montague DeRose and Associates, LLC for municipal advisor services beginning on or after September 13, 2021 for five years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$2,940,000.
- 7a-b. **Motion No. 150-21** – Authorized amendments to the agreements previously authorized under Board Motion No. 211-20 with the following service providers to increase the aggregate amount of those agreements by \$3,700,000 to a total aggregate amount not to exceed \$14,250,000 and extended the term of the agreements to August 24, 2022 for the rental of fully maintained and operated (FM&O) dump truck services: Allied Materials, Inc.; Channa Trucking; CIA Trucking; Curbside Trucking LLC; JD Trucking Company; Darrah Trucking & Excavating, Inc.; Tri Valley Water Trucks, Inc.; E.M. Blair Trucking; Gloria Washington Trucking, Inc.; Hills Trucking; Ibarra Trucking; Inder Trucking; Jackson Transportation; Just Because Trucking Inc.; Mae Trucking; Royal Trucking/Maintenance; S&L Enterprises; S&L Trucking LLC; Sky Rock, Inc.; S.M.G. Trucking; Sudden Sam’s Trucking; Sunny Motors Transport, Inc.; Tom Aiken General Engineering; and Wide Area, Inc; and authorized additional agreements for FM&O dump truck services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.
 - Eric O. Larsen, President, AFSCME Local 444 commented the union objects to extending these agreements and said recruitments for truck drivers and heavy equipment operators at the District should be open and continuous. Mr. Larsen asked if the District’s contractors will be required to be vaccinated. General Manager Chan said the Board received an information memo in response to Mr. Larsen’s comments at the August 10, 2021 Board meeting regarding truck driver and heavy transport operator recruitments and highlighted information contained in the memo. There was a discussion regarding ongoing vacancies, keeping recruitments for these classifications open and continuous, and vaccination requirements for contractors. Manager of Maintenance and Construction/Water Operations Michael R. Ambrose advised contractors will have the same vaccination requirements as District employees.

- Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Items 7a-b, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
8. **Motion No. 147-21** – Authorized the General Manager to purchase 2,000 acre-feet of Central Valley Project water from Contra Costa Water District for an amount not to exceed \$875,000.
 9. **Motion No. 148-21** – Approved the June 2021 and July 2021 Monthly Investment Transactions Reports.
 10. **Resolution No. 35243-21** – Adopting New Policy 2.27, Lactation Accommodation; Revised Policy 3.02, California Environmental Quality Act Implementation; Revised Policy 3.04, Coordination of District Construction and Maintenance Work with Other Agencies; Revised Policy 7.01, Aqueduct and Distribution Pipeline Rights-Of-Way; Revised Policy 7.11, Use of District Bay Area Facilities; Revised Policy 7.15, Climate Action; and Revised Policy 8.04, Establishing Wastewater Capacity Fees.

DETERMINATION AND DISCUSSION

11.1- Response to declaration of emergency for the repair of Mokelumne Aqueduct No. 2. 11.2

Director of Engineering and Construction Olujimi O. Yoloye presented an update on the need to declare a District emergency to repair the leaking aqueduct. On August 6, 2021, staff was notified of a leak on the aqueduct at Station 1620 located in the City of Stockton and temporarily repaired the leak. On August 9, staff assessed the aqueduct and discovered corrosion at the leak site which is directly under a Union Pacific Railroad bridge. Staff recommended immediate repair to avoid risks to water operations and significant liability associated with the railroad and surrounding private property. On August 18, to expedite repairs to the aqueduct, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity. Mr. Yoloye discussed the leak location and surrounding facilities, operational impacts and risk, the repair plan, as well as how the District is currently addressing the leak. He noted the District already has replacement pipe in inventory which will reduce the repair time by three to four months. Staff is asking the Board to ratify the General Manager’s “Declaration of Emergency” in accordance with Policy 7.03 as it prepares a contract with Ranger Pipelines, Inc. to complete the repairs which are estimated at \$700,000 to \$1,000,000. The District also plans to hire a consultant to monitor settlement of the Union Pacific Railroad bridge. Staff will continue consulting with Union Pacific Railroad as well as secure any necessary approvals. Mr. Yoloye responded to Board questions regarding the type of pipe being replaced, how long the aqueduct will be out of service, evaluation of Mokelumne Aqueduct Nos. 1 and 3, how long the aqueduct was leaking, and potential causes of the leak. He said staff will provide information on cause and failure, additional contracts awarded and repair progress during updates under the emergency declaration. The Board requested additional information on aqueduct maintenance and inspection activities as well as long-term plans to rehabilitate the aqueducts.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Items 11.1-11.2 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. 35244-21 – Ratifying General Manager’s Declaration of the Existence of a District Emergency and Authorizing Expenditure of Sums as Needed in Response to Such Emergency.

12. **General Manager’s Report.**

Coronavirus Update

General Manager Clifford C. Chan summarized the District’s vaccination policy discussed with the Board on August 10. He clarified the District added a six-week timeframe for when employees need to be fully vaccinated which was not discussed on August 10. Director of Operations and Maintenance David A. Briggs presented an update on daily positive COVID-19 cases in Alameda and Contra Costa counties as of August 21; District, state and counties’ vaccination rates; the number of positive COVID-19 cases at the District noting 54 percent of the cases in the last two months involved fully vaccinated staff; the number of staff currently quarantined; the latest information on state, federal and local guidelines for vaccinations and testing as well as vaccination policies at other public utilities and private companies. Mr. Briggs reviewed the District’s vaccination/paid leave policy and implementation priorities. Under the policy, employees will need to report proof of vaccination to the District by September 6 or begin weekly COVID-19 testing; testing will be performed on the employee’s own time and at the employee’s expense; employees will be required to be vaccinated six weeks after FDA normal use authorization of a vaccine; exemptions for vaccinations will be granted for employees with legitimate medical and religious reasons; and after September 30, District paid leave will be limited to vaccinated staff exposed to COVID-19 at work.

- Addressing the Board were the following: 1) Alicia Chakrabarti, EBMUD employee and ratepayer thanked the Board for the District’s vaccination policy; 2) Sofia Kolidas, EBMUD employee commended the Board for mandating vaccines for employees; 3) Lindsay Edelman, EBMUD employee asked the Board to consider encouraging employees to get vaccinated instead of mandating vaccines and said a mandate will cause divisions between staff; 4) Artem Dyachenko, EBMUD employee thanked the Board and the General Manager for the District’s vaccination policy; 5) Jason Conopa, EBMUD employee commented on the District’s vaccination policy, offering testing at no cost for employees, a policy for employees that may experience adverse reactions from the vaccine, telecommute options for immunocompromised or unvaccinated employees, and masks and social distancing instead of mandatory vaccines; 6) Wendy Ibarra, 2nd Vice President, AFSCME Local 2019 read comments from a Local 2019 member regarding the District’s vaccination policy, masking and social distancing and a request for the Board to reconsider mandating vaccines for employees; 7) Eric O. Larsen, President, AFSCME Local 444 commented on the COVID-19 pandemic and said the union opposes mandatory vaccinations. He asked the Board to hold off implementing the policy to allow employees to consult with their doctors; to not make vaccination status a condition of employment; and to extend the COVID-19 supplemental leave; 8) Cindy Green, EBMUD employee and ratepayer thanked the Board for the District’s vaccination policy; 9) Loren Spalina, EBMUD employee asked the Board to pause or reconsider implementing the vaccination policy; 9) Rachel, EBMUD employee commented she is opposed to the Board mandating vaccines for employees; 10) Sean Barrow, EBMUD employee commented vaccinations are the only way to go and said he is in favor of continuing to wear masks; 11) Morgan Gleason-Fenton, EBMUD employee thanked the

Board for the District's vaccination policy; 12) Chloe Cheok, EBMUD employee and ratepayer thanked the Board for the District's vaccination policy; and 13) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on unvaccinated, immunocompromised employees being required to use their own time and funds for weekly COVID-19 testing.

All Board members thanked the employees for their comments. The Board commented on the vaccination policy, personal experiences with family and friends that have contracted COVID, and encouraged employees to get vaccinated. Overall, the Board expressed continued support for the vaccination policy discussed on August 10. General Manager Chan responded to the comment from George Cleveland and clarified that employees with a medical or religious exemption would be provided District time for weekly COVID-19 testing. Mr. Chan thanked the employees for their comments and the Board for its support and summarized next steps for implementing the policy.

Los Vaqueros Reservoir Expansion Project Update

Manager of Water Supply Linda Hu presented an update on the District's potential participation in Contra Costa Water District's (CCWD) proposed expansion of Los Vaqueros Reservoir from 160 thousand acre-feet (TAF) to 275 TAF with six other water agencies (Alameda County Water District, Grasslands Water District, San Francisco Public Utilities Commission, San Luis Delta Mendota Water Authority, Santa Clara Valley Water District, and Zone 7 Water Agency). The project would provide supplemental water supply to EBMUD during droughts and emergencies with the District's cost share currently estimated to be between \$50 to \$100 million for 30 thousand acre-feet of storage in Los Vaqueros. Total estimated project capital costs is \$900 million. Staff completed negotiations of a Joint Powers Authority (JPA), is assisting CCWD with preparation for a California Water Commission grant feasibility hearing and is currently negotiating a third amendment to the existing cost-sharing agreement. Ms. Hu reviewed the project background and benefits to the District which include water supply reliability, enhancing water quality and water for the wildlife refuges in the Central Valley. One near-term project driver is the October 20, 2021 California Water Commission grant feasibility hearing. The project partners must demonstrate the project is feasible to remain grant eligible and formation of the JPA is key to demonstrating feasibility. The JPA formation process started in May 2020 and JPA agreement negotiations have been completed. The proposed JPA will include all project partners with the Department of Water Resources serving as the ex officio. Joining the JPA does not legally bind or otherwise commit EBMUD to participating in the project and she noted there are opportunities to exit the JPA before District funding commitments are required. The proposed final JPA agreement will be presented to the Board for consideration at its meeting on September 14, 2021 and at the same meeting, the Board will be asked to consider appointing primary and alternate representatives to the JPA Board. Each appointee may be a member of EBMUD's Board of Directors or a management-level employee. She highlighted initial JPA Board activities and proposed amendments to the Multiparty Agreement. The current Multiparty Agreement expires on December 31, 2021 and additional funding is necessary for additional preconstruction activities including design and permitting. Consequently, the potential partners are negotiating a third amendment to the Multiparty Agreement. The Board will also be asked to consider approving the amendment to the Multiparty Agreement at its September 14 meeting. In conclusion she reviewed the near-term project schedule and said the first JPA meeting will be scheduled for mid-November. The Board thanked staff for their work on the project.

- Director Coleman left the meeting at 3:20 p.m.

Capital Project Construction Update

Director of Engineering and Construction Olujimi O. Yoloye presented an overview of the District's infrastructure investment plan and approach to construction management and community outreach and highlighted work on three large projects planned in FY22 and FY23: the Orinda Water Treatment Plant Disinfection Improvements in Orinda; the Upper San Leandro (USL) Water Treatment Plant (WTP) Maintenance and Reliability Improvements in Oakland; and the Oakland Inner Harbor Pipeline Crossing in Alameda and Oakland. The project at the Orinda Water Treatment Plant will improve disinfection reliability, reduce disinfection by-products, and improve facilities. Due to the complex nature of the project he reported the District prequalified the general contractor and some of the sub-bidders. The project is estimated to cost \$220 million and construction is anticipated to start in spring 2022 and take five years. The USL and Sobrante WTP project will improve plant capacity, drought capabilities, chemical facilities, and reduce water loss at USL. It will improve chemical facilities at Sobrante and has the potential to receive federal funding. The project is estimated to cost \$101 million and construction is anticipated to start in summer 2022 and take three years. The Oakland Inner Harbor Pipeline Crossing in Alameda and Oakland will install 3,000 feet of 32" pipe under the Oakland Inner Harbor and 10,000 feet of 24" pipe within Oakland and Alameda streets. The project is estimated to cost \$35 million and construction is anticipated to start in spring 2022 and take 2.5 years. Mr. Yoloye discussed how the District manages projects using a partnering approach with various District workgroups, contractors, subcontractors and suppliers and how the District engages the community prior to and during construction. He reviewed typical construction mitigations noting they can vary based on project location, type of construction, and whether California Environmental Quality Act mitigation monitoring is required. Staff will present updates to the Planning Committee on the Orinda project in September, the Oakland Inner Harbor project in November and the USL and Sobrante project in December. Mr. Yoloye responded to Board questions on plans to bring recycled water to Alameda using the old crossing from the Oakland Inner Harbor Pipeline Crossing project.

REPORTS AND DIRECTOR COMMENTS

13. **Committee Reports.**

- Filed with the Board were the Minutes for the August 10, 2021 Planning Committee meeting.
- President Linney reported the Redistricting Ad Hoc Committee met earlier in the day (remotely) and received an update on the draft redistricting guidelines and criteria and the proposed redistricting activity schedule.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day (remotely) and received an update on the Monthly Investment Transactions Reports for June and July; the Quarterly Financial Reports; the proposed Water Infrastructure Finance and Innovation Act Loan; the Annual Internal Audit Report; and the adoption of a new policy on lactation accommodations and proposed revisions to six District policies.

14. **Other Items for Future Consideration.**

None.


15. **Director Comments.**

- Director Coleman reported on plans to present to the Rotary Club of Livermore Valley on September 7; present to the Walnut Creek Chamber of Commerce September 14 (remotely); attend the ACWA Federal Affairs Committee on September 15 (remotely); present to the Pleasant Hill Rotary on September 23; attend the DERWA Board meeting on September 27; and attend the UMRWA Board meeting on October 1.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

ADJOURNMENT

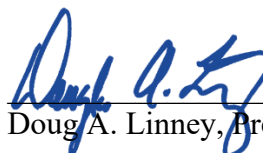
President Linney adjourned the meeting at 3:42 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: September 14, 2021



Doug A. Linney, President of the Board