

## MINUTES

Tuesday, January 10, 2017

**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 10:30 a.m. in the Administration Center Board Room.

### ROLL CALL

Directors John A. Coleman, Doug Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Frank Mellon were present at roll call. Director Andy Katz arrived at 11:12 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Director of Engineering and Construction Xavier J. Irias (Item 1), Assistant General Counsel Xanthe M. Berry (Items 1 and 2), Attorney Jonathan D. Salmon (Item 1), Director of Operations and Maintenance Michael J. Wallis (Item 2), Manager of Human Resources Laura A. Brunson (Item 3), Attorney Lourdes Matthew (Item 3), Industrial Employers Distributors Association representatives Bruce Heid and Glenn Berkheimer (Item 3).

### PUBLIC COMMENT

- Addressing the Board was Ivette Rivera, Gardener Foreman, who commented on an email she had sent to the Board about the need to reference Government Code 53297 in Policy 6.04 – Ethics Policy of the EBMUD Board of Directors.

### BROWN ACT BRIEFING

Attorney Saji T. Pierce presented the annual Brown Act briefing and ethics update. She highlighted Policy 6.04 – Ethics Policy of the EBMUD Board of Directors and the laws covered by this policy. She summarized recent legal developments pertaining to The Brown Act, the Public Records Act, the Conflict of Interest Code, California Government Code Section 1090 pertaining to public officials' approval of contracts, and the Political Reform Act. There was considerable discussion regarding Assembly Bill (AB) 1661 which became effective January 1, 2017. The law requires public officials that receive any type of compensation, salary, or stipend from the agency to attend at least 2 hours of sexual harassment prevention training every two years. Director Young asked if the training by her employer satisfies AB 1661 requirements. President Mellon asked whether his role as a consultant who provides sexual harassment prevention training to others is sufficient to meet the new training requirement. General Counsel Spencer said that staff would research these questions and report back to Directors Young and Mellon. Ms. Pierce presented the Board with copies of her presentation and responded to questions raised by Board members.

## **BOARD SUCCESSION PLAN**

Due to time constraints, this item was carried over to the Regular Business Meeting of January 24, 2017.

## **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 1:22 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 2017. Vice-President Patterson announced that due to personal reasons, he would not be available to serve as President. He requested that the Board consider a change from the traditional rotation of Vice-President to President. The Board approved this request.

- Motion by Director Patterson, seconded by Director Coleman, to nominate Director Lesa R. McIntosh for President of the Board of Directors for 2017.

President Mellon called for additional nominations, none came forward, and he closed the nomination period. The motion to elect Director Lesa R. McIntosh as President of the Board, 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. 001-17** – Elected Director Lesa R. McIntosh as President of the Board of Directors for 2017.

### **Election of Vice-President of the Board**

Past President Mellon handed over the gavel to newly elected President Lesa R. McIntosh and she thanked the Board for the opportunity to serve as President. She opened the floor for nominations for Vice-President of the Board for 2017.

- Motion by Director Mellon, seconded by Director Linney, to nominate Director William B. Patterson for Vice-President of the Board for 2017.

President McIntosh called for additional nominations, none came forward, and she closed the nomination period. The motion to elect Director William B. Patterson as Vice-President of the Board, 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. 002-17** – Elected Director William B. Patterson as Vice-President of the Board of Directors for 2017.

### **Committee Assignments**

President McIntosh presented a memorandum requesting 2017 Committee Assignment preferences. She requested that Board members submit their preferences to Secretary Lewis, and said that committee assignments will be presented for Board consideration on January 24.

### **Board Service Award**

President McIntosh acknowledged Director Andy Katz for his 10 years of service to the District. She highlighted his numerous contributions to the Board and his constituents over the years. On behalf of the Board, President McIntosh presented Director Katz with his 10-year pin. The Board and staff applauded Director Katz on this milestone.

### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

### **PUBLIC COMMENT**

- Addressing the Board were the following persons: 1) Ivette Rivera, Gardener Foreman, commented on a packet of information she presented on an employee's rights to individual representation and suggested changes to Policy 6.04 Ethics Policy of the EBMUD Board of Directors; 2) M. Rosa Merced, Network Analyst II, commented on issues surrounding her job injury claim, her work history at the District, and announced her intent to resign from the District under distress; and 3) Mark Foley, President, AFSCME Local 2019, asked the Board to adjourn today's meeting in memory of retiree Patricia Patrick who contributed 39 years of service to the District.

## CONSENT CALENDAR

- Item 8 was removed from the Consent Calendar for discussion.
  - Motion by Director Coleman, seconded by Director Patterson, 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. 003-17** – Approved the Special and Regular Meeting Minutes of December 13, 2016.
  2. The following correspondence was filed with the Board: 02.1) Packet entitled “Annual Brown Act & Ethics Update” dated January 2017; 02.2) Presentation entitled “Annual Brown Act and Ethics Update” dated January 2017; 02.3) Memorandum dated January 10, 2017 to Board of Directors, from Lesa R. McIntosh, President, regarding 2017 Board Committee Assignment Preferences; 02.4) Memorandum dated January 10, 2017 (with Exhibits 1-9), from Ivette Rivera, to Board of Directors, General Manager and General Counsel, regarding “East Bay Municipal Utility District Employees Do Have The Right To Individual Representation [There is no such thing as what Frank Mellon termed, on 1/28/14, as an ‘exclusive remedy’ at EBMUD]”; 02.5) Memorandum dated January 10, 2017, to Board of Directors, Alex Coate, General Manager, Locals 2019, 444, 39, from M. Rosa Merced, Emp. 10476, regarding “Continued Issues: Workers Comp/Job Injury Retiring Under Distress”; 02.6) Presentation entitled “East Bay Municipal Utility District Federal Update” dated January 10, 2017; 02.7) Presentation entitled “Reclaimed Water Chevron Richmond Refinery” dated January 10, 2017; 02.8) Presentation entitled “North Richmond Water Recycling Negotiations,” dated January 10, 2017; 02.9) Presentation entitled “2016 Statistical Opinion and Customer Outreach Research Results and Outreach Plan” dated January 10, 2017; 02.10) Presentation entitled “Water Supply Board Briefing” dated January 10, 2017; 02.11) Memorandum dated January 10, 2017, to Board of Directors from Alexander R. Coate, General Manager, regarding “Board of Directors Meeting Schedules During the Month of August”; and 02.12) Memorandum dated January 10, 2017 to Board of Directors from Eileen M. White, Manager of Water Operations, regarding “Freeport Regional Water Authority (FRWA), January 12, 2017 Board of Directors Special Meeting”.
  3. **Motion No. 004-17** – Awarded a contract to the lowest responsive/responsible bidder, GSE Construction Company, Inc., in the amount of \$14,766,000 for construction of the South Reservoir Replacement under Specification 2075.
  - 4.1. **Motion No. 005-17** – Awarded a contract to the lowest responsive/responsible bidder, F.D. Thomas, Inc., in the amount of \$4,937,816 for construction of the South Interceptor 3<sup>rd</sup> Street Rehabilitation Phase 1 Project under Specification SD-379A.
  - 4.2. **Motion No. 006-17** – Authorized an agreement beginning on or after January 10, 2017 with Carollo Engineers, Inc., in an amount not to exceed \$370,018 for supplemental construction inspection services for the South Interceptor 3<sup>rd</sup> Street Rehabilitation Phase 1 Project.

5. **Motion No. 007-17** – Awarded a contract to the lowest responsive/responsible bidder, Con-Quest Contractors, Inc., in the amount of \$525,000 for construction of the Main Wastewater Treatment Recycled Water 12-inch Pipeline Extension and Commercial Fill Station Project under Specification SD-387.
6. **Motion No. 008-17** – Authorized an agreement beginning on or after January 10, 2017 with Integral Group, Inc., in an amount not to exceed \$1,658,198 for design and construction management support services for upgrading the heating, ventilation, and air conditioning systems at the Administration Building and Adeline Maintenance Center.
7. **Motion No. 009-17** – Approved a Fifth Amendment to the Lease Agreement between Viridis Fuels, LLC (Viridis), and the District for a portion of the West End Property adjacent to the District’s Main Wastewater Treatment Plant, in which Viridis will be allowed to defer the monthly “Additional Value” payment of \$21,666.67 for a period not to exceed six months.
8. **Motion No. 010-17** – Adopted revised Principles for Use by Other Parties of Unassigned EBMUD Capacity in the Freeport Regional Water Project.
  - Item 8 was removed from the Consent Calendar for discussion.
  - Addressing the Board was Sonia Diermayer, representing the Sierra Club, who expressed support for the revised version of the Principles. There was Board discussion about the impacts to revenue generation opportunities, and staff said that the Board will consider and approve all agency requests for use of unassigned capacity in the Freeport Regional Water Project.
  - Motion by Director Coleman, seconded by Director Patterson, to approve the recommended action for Item 8, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

## **DETERMINATION AND DISCUSSION**

### **9. Legislative Update.**

EBMUD Washington, D.C. Lobbyist Eric Sapirstein presented an overview of federal priorities. He said the 115<sup>th</sup> Congress and President-Elect Donald Trump’s administration will bring change. Areas of interest to EBMUD include Endangered Species Act (ESA) reforms, changes affecting the Central Valley Project Improvement Act (CVPIA), spending and tax reform, regulatory reform, and infrastructure assistance. Mr. Sapirstein said that EBMUD will continue to follow legislative actions that could impact water, the environment, and infrastructure assistance. There was a brief question and answer period regarding federal programs. Staff was asked to provide information about the protections for the CVPIA and the ESA included in the California water provisions of the Water Infrastructure Improvements for the Nation Act. Staff was also asked to provide information on the source of federal forest management funding and whether forest timber fees were the source of such funding.

Next, Manager of Legislative Affairs Marlaigne K. Dumaine highlighted the proposed federal legislative initiatives for 2017. Legislative/Human Resources Committee Chair Director William B. Patterson announced that the Committee supported the recommendations presented by staff.

- Motion by Director Patterson, seconded by Director Coleman, to approve the recommended action for Item 9, 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. 011-17** – Approved the federal legislative initiatives for 2017 which focus on: 1) Advance EBMUD's interests in the context of protecting EBMUD's Mokelumne River water rights, EBMUD's water supply reliability, and the Mokelumne fishery; 2) seek federal funding opportunities for EBMUD projects via any new and existing federal programs; and 3) continue to investigate federal efforts to promote healthy forests and watersheds, and identify opportunities for EBMUD to engage.

FEDERAL INITIATIVE	ACTION
1. Advance EBMUD's interests in the context of Mokelumne River water rights, water supply reliability, and the Mokelumne fishery.	<ul style="list-style-type: none"> <li>• Staff will focus on EBMUD's priority issues:               <ul style="list-style-type: none"> <li>○ Protect EBMUD's Mokelumne water rights.</li> <li>○ Preserve EBMUD's access to water transfers.</li> <li>○ Protect regional water supply programs and projects, including the Freeport Regional Water Project.</li> <li>○ Ensure that EBMUD's ratepayers are not be held responsible for the flow obligations, project mitigations, or expected habitat restoration success of others, including the state and federal projects.</li> <li>○ Protect the Mokelumne fishery by working to ensure that any policy or program revision, or project or project-related activity that would impact the Mokelumne salmonid fishery includes mitigation by the responsible parties for the impacts.</li> <li>○ Support appropriate stewardship responsibilities for the CVP.</li> <li>○ Support the preservation of the ESA and the CVPIA.</li> </ul> </li> </ul>
2. Seek federal funding opportunities for EBMUD projects via any new and existing federal programs.	<ul style="list-style-type: none"> <li>• Pursue FY18 federal funding for WRDA authorized projects: the San Ramon Valley Recycled Water Project, the Integrated Regional Recycled Water Program, and seek to leverage the Bay Area Regional Desalination Project authorization as a component of the Bay Area Regional Reliability Project.</li> <li>• Advance EBMUD's infrastructure funding needs, including but not limited to, the Capital Improvement Program, the Regional EBMUD Seismic Component Upgrade (RESCU) program, recycled water projects, projects to facilitate regional and/or local water supply reliability, projects or programs to facilitate climate change mitigation and resiliency, including water and energy conservation, and projects to facilitate renewable energy. Seek</li> </ul>

	project assistance opportunities within the context of any discussions regarding drought or emergency relief.
3. Continue to investigate federal efforts to promote healthy forests and watersheds, and identify opportunities to engage.	<ul style="list-style-type: none"> <li>• Support the State Administration in its advocacy that federal forest management funding is spent on forest management and not redirected to suppression or other efforts.</li> <li>• Monitor federal legislation on forest and watershed health, and identify potential opportunities for EBMUD to engage, particularly through its role in the Upper Mokelumne River Watershed Authority.</li> <li>• Continue to gather information at the federal level on efforts to fund both forest management and wildfire suppression, as well as efforts to promote forest and watershed health, and provide updates to the Board as appropriate.</li> </ul>

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

General Manager Alexander R. Coate reported that as part of Board Motion No. 011-14 approving a salary increase for EBMUD Directors, the Board voted to conduct an annual review of its compensation during the first Board meeting of the calendar year and to use the staff salary adjustment information from the prior year as the basis for the Board’s discussion. The Municipal Utility District Act authorizes an annual adjustment to the salary of Directors of not more than 5 percent for each calendar year following the effective date of the last adjustment. The Board last voted to adjust its compensation on January 12, 2016 in the amount of \$32 (2.7 percent) to \$1,218 per month. The 2016 general salary increase received by District staff effective April 18, 2016 was 3.7 percent. A 2017 adjustment of \$45 per month (3.7 percent) would change the Board’s monthly compensation from \$1,218 to \$1,263.

There was considerable discussion by the Board about its annual salary adjustment. Following this discussion, the consensus of the Board was to refer this item to the January 24, 2017 Finance/Administration Committee meeting. The Board requested staff to provide a history of board salary increases and salary information on other Bay Area water and wastewater agencies.

11. **General Manager’s Report.**

General Manager Coate reported that staff would provide an update on the Chevron Recycled Water contract negotiations. Chevron Government Affairs Manager Walt Gill presented historical background on the partnership with EBMUD and pointed out that they were at an impasse on reclaimed water cost renegotiations. Chevron requested that the EBMUD Board empower staff to consider alternatives other than strict adherence to Cost of Service Study recommendations for the renewal of the North Richmond Water Recycling Project contract. He said that the proposed costs do not take into account Chevron’s investment and attributes associated with large industrial consumers. Director of Water and Natural Resources Richard G. Sykes presented an update on the proposed terms for the new agreement with West County Wastewater District for recycled water.

Following extensive discussion, the Board directed staff to extend the current agreement with Chevron for no more than one year, obtain data on Chevron costs, and provide quarterly updates to the Board (April 2017, July 2017, October 2017 and January 2018).

Next, Special Assistant to the General Manager Alison A. Kastama presented the survey results from the 2016 opinion and customer outreach research conducted by EMC Research, Inc. on behalf of the District. She reported that EMC Research, Inc. completed 1,200 telephone interviews between November 10-21, 2016 with both District account holders and non-account holders within the service area. The survey confirmed the District maintains a favorable brand rating and has strong ratings in core job competencies: safe, reliable, and good tasting water. The vast majority of customers have positive perceptions of local water quality, continue to believe the District does a good job encouraging conservation, and have a good experience when contacting the District to resolve issues. Staff will utilize the survey results to craft targeted messaging to consumers through various outreach tools, such as the *Customer Pipeline* newsletter, social media accounts, the website, various presentations and direct conversations with EBMUD constituents. Staff will also continue outreach through positive media coverage. The Board commented on areas for additional outreach including earthquake preparedness, outreach to disadvantaged communities, electronic *Pipeline* subscriptions, promoting water quality to communities where bottled water use is higher, and updates on investments in infrastructure.

Operations and Maintenance Department Manager Eileen M. White presented the Water Supply Briefing which covered recent storms, flood control operations, water supply projections, water production, and water savings. Recent rain storms increased water supplies within the state and locally. East Bay watershed season precipitation is 105 percent of average and the Mokelumne River watershed season precipitation is 108 percent of average. Flood control operations are underway and the District is notifying agencies and the public regarding releases. Total system storage is 280,000 acre feet more than last year at this time.

In concluding, General Manager Coate reported that the 2016 Interdepartmental Committee Reports, the December 2016 Monthly Report, and a memorandum regarding Board of Directors meeting schedules during the month of August had been provided in the Board's packets. Staff was asked to investigate the option to modify the narrow timeframe the Board has to exercise its AB 408 authority to appoint an uncontested candidate to the Board and also whether a legislative amendment should be considered.

## **REPORTS AND DIRECTOR COMMENTS**

### **12. Committee Reports.**

- Filed with the Board were the Planning and Legislative/Human Resources Committee Minutes of December 13, 2016.

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

None.



14. **Director Comments.**

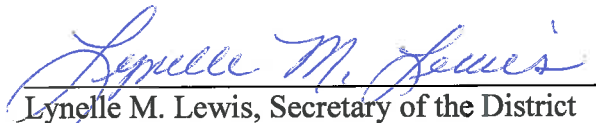
- Director Coleman reported participating in the Association of California Water Association (ACWA) teleconference meeting on December 19, 2016 in Oakland. He reported on plans to attend/participate in the following upcoming events: EBMUD Recycled Water meeting on January 11 in Orinda; ACWA teleconference meeting on January 11 in Oakland; EBMUD Happy Valley Pipeline meeting on January 11 in Lafayette; the Contra Costa County Mayors' Conference on January 12 in Danville; ACWA teleconference meeting on January 17 in Oakland; East Bay Economic Development Alliance Legislative Reception on January 19 in Oakland; and an ACWA teleconference meeting on January 23 in Oakland.
- Director Katz reported attending the Alameda County Community Choice Aggregation Steering Committee meeting on January 4 in Castro Valley.
- Director Linney had no comment.
- Director Mellon had no comment.
- Director Patterson had no comment.
- Director Young had no comment.
- President McIntosh had no comment.

**ADJOURNMENT**

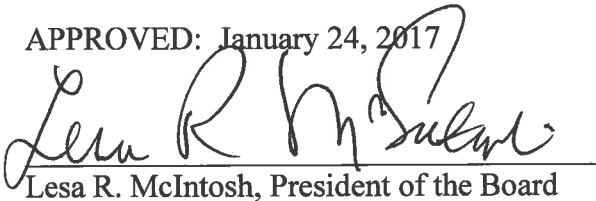
President McIntosh adjourned the meeting in memory of retiree Patricia Patrick who passed away on, December 19, 2016. Ms. Patrick, who worked for the District for 39 years, began her career in the Customer Services Department and retired from the New Business Office in September 2013. Pat was also dedicated to labor relations, representing Local 2019 as Chief Steward for 15 years.

The meeting was adjourned at 4:47 p.m.

SUBMITTED BY:

  
Lynelle M. Lewis, Secretary of the District

APPROVED: January 24, 2017

  
Lesla R. McIntosh, President of the Board