

MINUTES

Tuesday, January 14, 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 11:00 a.m. in the Administration Building Board Room.

ROLL CALL

Directors John A. Coleman, Doug Linney, Frank Mellon, Lesa R. McIntosh, William B. Patterson, and President Marguerite Young were present at roll call. Director Katz arrived in the Board Room at 11:04 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Attorney Ayriel A. Bland (Items 1a, 2a, and 2b) and Engineering Manager Elizabeth Z. Bialek (Items 1a, 2a, and 2b).

BROWN ACT BRIEFING

Attorneys Saji T. Pierce and Ayriel A. Bland presented the annual Brown Act briefing and ethics update. Ms. Pierce reviewed Policy 6.04 – Ethics Policy of the EBMUD Board of Directors and the importance of timely completion of ethics and sexual harassment prevention training as outlined in Assembly Bills 1234 and 1661. She and Ms. Bland discussed recent legal developments pertaining to Brown Act rules on the use of the “Committee Exception” as defined in Government Code section 54954.3(a) during special meetings and the findings from a case regarding serial meetings and secret ballot violations. Next, Ms. Pierce provided updates on the Fair Political Practice Commission’s (FPPC) gift limit; recent legal developments about the “Public Generally” exception as defined in FPPC regulation 18703(a) and how it applies to Board members’ ability to participate in the District’s rate setting process; and recent rulings regarding legal exceptions for legislative bodies and individual officials under California Government Code Section 1090.

- Director Coleman left the Board Room at 11:26 a.m. and returned at 11:27 a.m.

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Young called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Building Board Room.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Frank Mellon, Lesa R. McIntosh, and President Marguerite Young were present at roll call. Director William B. Patterson arrived in the Board Room at 1:17 p.m.

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.

Election of President of the Board

President Young opened the floor for nominations for President of the Board for 2020.

- Motion by Director Coleman, seconded by Director McIntosh, to nominate Director Marguerite Young for President of the Board of Directors for 2020.

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

Motion No. 001-20 – Elected Director Marguerite Young as President of the Board of Directors for 2020.

Election of Vice-President of the Board

President Young opened the floor for nominations for Vice-President of the Board for 2020.

- Motion by Director Coleman, seconded by Director Mellon, to nominate Director Doug Linney for Vice-President of the Board for 2020.

President Young called for additional nominations, none came forward, and she closed the nomination period. The motion to elect Director Doug Linney 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. 002-20 – Elected Director Doug Linney as Vice-President of the Board of Directors for 2020.

Committee Assignments

President Young announced the Board received a memorandum requesting 2020 Committee assignment preferences at their places and put forth a recommendation to reorganize the Legislative/Human Resources Committee into two committees or separate and merge one or both of them with other standing committees. Following a brief discussion, General Manager Coate said staff would provide information on the history of the Board's standing committees and the rationale for the current committee structure for Board discussion at the January 28 meeting. President Young asked Board members to submit their preferences to Secretary Cole and to indicate if their choices include serving on a reorganized Legislative/Human Resources Committee.

President Young 5-Year Service Award

On behalf of the Board of Directors, Vice-President Linney acknowledged President Young for 5 years of service to the District. He highlighted her many contributions to the District and the broader community including, but not limited to, her advocacy efforts to secure the Wild and Scenic designation for the Mokelumne River, as well as support for environmental protection and increased investments in infrastructure and renewable energy projects. Director Linney presented President Young with a 5-year service pin and the Board and staff applauded her on this milestone. President Young thanked the Board and staff and said she has enjoyed serving the District.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera, EBMUD Gardener Foreman, who commented on the 9th Circuit Federal Court proceedings she referenced during the December 10, 2019 Regular Board meeting public comment period and played a brief audio clip of the proceedings.

CONSENT CALENDAR

- Items 4 and 7 were removed from the Consent Calendar for discussion.
 - Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Items 1-3, 5-6, and 8-12 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 003-20** – Approved the Regular Meeting Minutes of December 10, 2019.
 2. The following correspondence was filed with the Board: 1) EBMUD Annual Brown Act and Ethics Update materials from Closed Session, dated January 2020; 2) Closed Session Presentation entitled, "Annual Brown Act and Ethics Update," dated January 14, 2020; 3) Memorandum dated January 14, 2020, to Board of Directors from Marguerite Young, President, regarding 2020 Board Committee Assignment Preferences; 4) Presentation entitled, "Water Supply Update," dated January 14, 2020; 5) Presentation entitled, "Washington Update An Electoral Storm on the

Horizon: The Second Session,” dated January 14, 2020; **6)** Memorandum dated January 14, 2020, to Board of Directors Mellon, Linney, Coleman, Young, McIntosh, Patterson, Katz, General Manager Alec (sp) Coate and General Counsel Craig Spencer from Ivette Rivera, Grounds Foreman regarding YouTube Clip of 9th Circuit Court Proceeding; Ivette Rivera v EBMUD et al; **7)** Speakers’ Bureau and Outreach Record CY20, dated January 14, 2020; **8)** Presentation entitled, “Facility Landscape Maintenance,” dated January 14, 2020; and **9)** Presentation entitled, “General Manager Recruitment,” dated January 14, 2020.

3. **Motion No. 004-20** – Awarded a contract to Afton Pumps, Inc. in an amount, after the addition of taxes, not to exceed \$147,335 for supplying one vertical diffusion vane pump for the District’s Richmond Advanced Recycled Expansion Facility.
 4. **Motion No. 011-20** – Authorized an agreement beginning on or after January 15, 2020, with Rubicon Landscape Corporation in an amount not to exceed \$115,066 annually for facility landscape maintenance at various District facilities for three years with two options to renew for additional one-year periods, for a total cost of \$575,330 under Request for Proposal No. FMC736-20-02; and directed staff to review contract utilization and staffing with the Board of Directors in November/December 2020.
- Director Mellon left the Board Room at 1:34 p.m. and returned at 1:37 p.m.

Planning Committee Chair Doug Linney reported the Committee received a presentation on this topic earlier and declined to take a position on the staff recommendation. The Committee asked staff to provide the presentation to the Board.

Manager of Facility Maintenance and Construction Tony J. Montano presented an overview of the District’s facility landscape maintenance activities and a proposal to contract out a portion of the work during periods of peak workload. This item was discussed at the December 10, 2019 and January 14, 2020 Planning Committee meetings. The District performs vegetation management at over 400 facilities in the East Bay. During the fire season, fire fuel abatement at facilities in wooded or rural areas is mandated by local fire code and requires the use of all District resources which in turn can create a backlog of deferred work. Mr. Montano reviewed historical grounds maintenance staffing levels and discussed challenges meeting the fire code mandates with current resources. The District funded an additional Grounds Maintenance Specialist II position in Fiscal Year 2020 and the recruitment will open on or after January 20. However, to address peak workload issues during the fire season, the District proposes contracting out for pruning, weeding, and planting activities at various District administration buildings, service centers, and the Oakport facility. The agreement would provide the equivalent of 2-3 full-time employees during the fire season. Per a request from the Planning Committee, he reviewed the staffing and equipment costs to contract out versus hiring staff. He noted staff has met with AFSCME Local 444, and the union continues to object to contracting out this work. Based on direction from the Planning Committee today, staff will provide an update on contract utilization and staffing to the Board in 2021.

- Addressing the Board was Eric Larsen, President, AFSCME Local 444, who confirmed the union’s position, and commented on Municipal Utility District (MUD) Act provisions for contracting out. He offered alternatives to contracting out, including hiring additional staff to complete the tasks in the proposed agreement and fire fuel abatement work.

There was considerable Board discussion and Mr. Montano responded to Board questions regarding current grounds maintenance staffing levels; the proposed agreement terms and duration; the potential to hire staff, including temporary employees to complete the work versus contracting out; cross-training across classifications to complete the work; potential MUD Act impacts; and impacts if the item is postponed for two weeks to allow staff to hold further discussions with the union.

Director Coleman offered an amendment to the original motion to include direction to staff to provide an update to the Board after the fire season in November/December regarding contract utilization and staffing.

Motion by Director Coleman, seconded by Director Mellon, to amend the original motion to include direction to staff to provide an update to the Board in November/December 2020 regarding contract utilization and staffing.

President Young offered a "Substitute Motion" to postpone a decision on the agreement for two weeks to provide time for staff to hold further discussions with the union.

- Motion by President Young, seconded by Director Katz, to postpone making a decision on the agreement to January 28, 2020 to provide time for staff to hold further discussions with the union *failed* (3-4) by the following roll call vote: AYES (Katz, Linney, and Young); NOES (Coleman, McIntosh, Mellon, and Patterson); ABSTAIN (None); ABSENT (None).

There was additional Board discussion regarding the potential impacts of postponing a decision on the agreement. Director Coleman reiterated the proposed amendment to the original motion.

- Motion by Director Coleman, seconded by Director Mellon, to amend the original motion to include direction to staff to provide an update to the Board in November/December 2020 regarding contract utilization and staffing carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (None).
5. **Motion No. 005-20** – Authorized an agreement with the City of Alameda (Alameda) under which the District will provide Alameda with sanitary sewer overflow sampling and analysis services on an as-needed basis, with reimbursement from Alameda for the value of services provided.
 6. **Motion No. 006-20** – Authorized an agreement beginning on or after January 14, 2020 with Simpson Gumpertz and Heger, Inc. in an amount not to exceed \$1,993,470 for design and construction management support services for roofing systems improvements at the Administration Building.
 - Director Mellon left the Board Room at 2:12 p.m. and did not return.
 7. **Motion No. 012-20** – Authorized a cost-sharing agreement with Sonoma Water, Alameda County Flood Control and Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, and Contra Costa County Flood Control and Water Conservation District for pilot implementation of the Advanced Quantitative Precipitation Information system in an amount not to exceed \$45,000.

- Director Coleman recused himself from voting on Item 7 due to a potential conflict of interest related to his employment with the Bay Planning Coalition. Director Coleman left the room at 2:12 p.m. and returned after the vote at 2:13 p.m.
 - Motion by Director McIntosh, seconded by Director Linney, to approve the recommended action for Item 7, carried (5-0) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (Coleman); ABSENT (Mellon).
8. **Motion No. 007-20** – Approved a five-year lease agreement with Cranbrook Realty Investment Fund, LP dba Lodi Wine and Business Center, for 6,517 square feet of office space and 6,000 square feet of warehouse space, located at 1 Winemaster Way (aka Lodi Wine and Business Center) in Lodi, retroactively to January 1, 2020 through December 31, 2025. The base rent is \$76,264 for the first year, with a total scheduled base rent including escalation over the five-year term, of \$404,098.
 - 9.1. **Motion No. 008-20** – Approved the Water Supply Assessment requested by the City of Oakland for the California College of the Arts Oakland Campus and Clifton Hall Redevelopment Project pursuant to California Water Code, Sections 10910-10915.
 - 9.2. **Motion No. 009-20** – Approved the Water Supply Assessment requested by the City of San Ramon for the City Center Mixed Use Master Plan Project pursuant to California Water Code, Sections 10910-10915.
 10. **Motion No. 010-20** – Authorized the Office of General Counsel to continue employment of the Law Offices of Curtis T. White, PC, for specialized legal services in Federal Communications Commission licensing related matters in an additional amount not to exceed \$40,000.
 11. **Resolution No. 35161-20** – Amend Resolution No. 35145-19 Authorizing The Number And Character Of Positions And Authorizing The General Manager To Take Action In Connection Therewith.
 12. **Resolution No. 35162-20** – Revise East Bay Municipal Utility District’s Regulations Governing Water Service To Customers, Section 15 - Discontinuation Of Service Pursuant To The Requirements Of Senate Bill 998.

DETERMINATION AND DISCUSSION

13. Legislative Update.

EBMUD Washington, D.C. Lobbyist Eric Sapirstein presented an update on federal legislative activities including Fiscal Year 2020/2021 spending; water supply reliability; infrastructure policy; contaminants of emerging concern; disadvantaged community assistance; California resources issues including wildfires and forestry health, energy-water nexus, and coastal resiliency; climate change; the Green New Deal; and the upcoming 2020 Presidential election. The Board thanked Mr. Sapirstein for the presentation and Director Coleman requested staff provide the language for the District’s federal initiatives 1 and 3 to the Upper Mokelumne River Watershed Authority (UMRWA) Executive Director for inclusion in the January 24 UMRWA meeting materials.

Next, Manager of Legislative Affairs Marlaigne K. Dumaine reviewed the proposed federal initiatives for 2020. Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier in the day and supported the staff recommendations.

- Motion by Director Coleman, seconded by Director McIntosh, to approve the proposed federal initiatives for 2020, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 013-20 – Approved the four proposed federal initiatives for 2020: 1) advance EBMUD's interests in the context of water supply reliability and the Mokelumne River fishery; 2) pursue federal funding opportunities for EBMUD projects and operating infrastructure via new and existing federal programs; 3) actively assess and seek opportunities to engage on wildfire preparedness, healthy forest, and watershed-related initiatives; and 4) advance EBMUD's interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment.

14. Approve adjusting the Board of Directors' monthly compensation.

- Motion by Director Linney, seconded by Director Patterson, to approve the recommended action for Item 14, carried (5-1) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, and Young); NOES (Coleman); ABSTAIN (None); ABSENT (Mellon).

Motion No. 014-20 – Approved increasing the Board's monthly compensation effective February 1, 2020 by \$50 per month or 3.8 percent, which will result in the Board's monthly compensation changing from \$1,317 to \$1,367.

15a-d. Approve actions related to the recruitment and selection process for the General Manager.

Manager of Recruitment and Classification Richard G. Jung reported that on December 10, 2019, General Manager Coate announced his plans to retire from the District. Staff is seeking Board authorization for the Human Resources Department to initiate a recruitment effort for a new General Manager on or after January 21, that will include both internal and external candidates, with outreach focused in California; approval of the text for the recruitment brochure; and approval of the proposed recruitment, selection and hiring schedule. Additionally, staff is recommending the Board appoint a three-member Board Ad Hoc Advisory Selection Committee comprised of the President, Vice-President, and immediate past President to lead the recruitment effort.

There was Board discussion regarding the recruitment materials, the proposed schedule and the makeup of the proposed Ad Hoc Advisory Committee. As immediate past President, Director McIntosh declined to serve on the Committee. Director Coleman agreed to serve on the Committee and Director Katz offered to act as an alternate in the event Director Coleman was unavailable. The Board requested edits to the recruitment brochure to include language regarding the District providing clean, safe, affordable water to District customers 24 hours a day/7 days a week/365 days per year and the District values; and to place the job announcement with the Department of Water Resources and in Maven's Notebook.

Secretary Cole was asked to confirm schedules with the Board members appointed to the Ad Hoc Advisory Selection Committee and to provide an update to Human Resources Department staff.

- Director Linney left the Board Room at 3:06 p.m. and returned at 3:07 p.m.
- Motion by Director Katz, seconded by Director Linney, to approve the recommended action for Item 15a, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 015-20 – Approved a recruitment and selection process for the General Manager position and authorized the Human Resources Department to initiate a recruitment effort that includes outreach to both internal and external candidates with public outreach focused in California.

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended action for Item 15b, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 016-20 – Approved the text for the recruitment flyer for the General Manager position with edits received from Board members.

- Motion by Director McIntosh, seconded by Director Linney, to approve the recommended action for Item 15c, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 017-20 – Approved the proposed schedule for the recruitment, selection and hiring process for the General Manager position.

- Motion by President Young, seconded by Director McIntosh, to approve the recommended action for Item 15d, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 018-20 – Appointed President Marguerite Young, Vice-President Doug Linney, and Director John A. Coleman to serve as the Board Ad Hoc Advisory Selection Committee for the General Manager recruitment.

16. **General Manager's Report.**

Manager of Maintenance and Construction/Water Operations David A. Briggs presented the Water Supply Update which included a review of Water Year 2019, an update on Water Year 2020, current conditions for the District's and California's water supply and regional forecasts for January through March 2020. In addition to reporting on gross water production, precipitation in the East Bay and the Mokelumne, and the snow depth at Caples Lake, he said that as of January 12, 2020, the District's total system storage was 604,910 acre feet, which is 108% of average and 78% of capacity. Mr. Briggs responded to Board questions about updated requirements for flood storage, the U.S. Army Corps of Engineers rule curve, and funding for stream gauges.

- Director Patterson left the Board Room at 3:11 p.m. and returned at 3:17 p.m.

General Manager Coate announced the December 2019 Monthly Report and the 2019 Interdepartmental Committees Annual Reports were provided in the Board's packet. He noted the Interdepartmental Committees Reports also includes a report from the Diversity Committee, which was formed and began meeting in 2019. He also asked the Board to review the Speakers' Bureau and Outreach Record and provide updates to staff as needed.

REPORTS AND DIRECTOR COMMENTS

17. Committee Reports.

- Filed with the Board were the Planning and Legislative/Human Resources Committee Minutes of December 10, 2019.

Planning Committee Chair Doug Linney reported the Committee met at 9:00 a.m. and received updates on the following: Intranet Replacement Project – Splashpad; Wet Weather Consent Decree Implementation; West County Wastewater District Recycled Water Supply Agreement; Main Wastewater Treatment Plant Gas Flare Improvements; and Facility Landscape Maintenance.

Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met at 10:30 a.m. and received information on the Federal Initiatives for 2020 and a proposed amendment to Position Resolution No. 35145-19.

18. Other Items for Future Consideration.

- Memo regarding the history of the Board's standing committees and the rationale for the current committee structure; and
- Information on how a proposed climate catalyst revolving loan fund in the Governor's proposed budget can potentially benefit the District's Resource Recovery Program.

19. Director Comments.

- Director Coleman reported meeting with a constituent to discuss EBMUD issues in Walnut Creek on January 13 and plans to attend the CASA Conference in Indian Wells on January 22.
- Director Katz requested staff review a proposed climate catalyst revolving loan fund that is included in the Governor's proposed budget and could potentially be of benefit to the District's Resource Recovery Program.
- Director Patterson reported attending the Oakland East Bay Democratic Club (OEBDC) Awards Dinner in Oakland on November 21 where he was honored with the OEBDC 2019 Political Leadership Award. He reported on plans to attend the Martin Luther King Jr. Committee of Oakland event in Oakland on January 20 where he will be honored with the Batita Coty Award.
- Directors Linney, McIntosh, Mellon and President Young had no comment.

ADJOURNMENT

Vice-President Linney announced the passing of Howard Kerr, former Board member of the Oro Loma Sanitary District and provided highlights from Mr. Kerr's life and career. Director McIntosh announced the passing of Whitney Dotson, former Board member of the East Bay Regional Park District and provided highlights from Mr. Dotson's life and career.

President Young closed the meeting in memory of Messrs.' Kerr and Dotson and requested staff send letters of condolence to the respective agencies on behalf of the District.

President Young adjourned the meeting at 3:35 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: January 28, 2020



Marguerite Young, President of the Board