

MINUTES

Tuesday, August 8, 2017

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

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Attorney Lourdes Matthew (Item 1), Manager of Human Resources Laura A. Brunson (Item 1), Manager of Employee Relations David Pak (Item 1), and Industrial Employers Distributors Association representative Glenn Berkheimer (Item 1).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Amy Bernstein Thomas (a.k.a. Felicia Laura Collier) commented on her current medical status after brain injury surgery and asked the Board to reconsider her settlement request and reinstating her retirement benefits; 2) Jae Park, Local 2019, commented on negotiations and equity adjustment requests for Electrical Engineers; and 3) Jay Morgan, Local 2019 Executive Board member, commented on negotiations and equity adjustment requests for Drafters, Senior Programmer Analysts, Materials Testing Technicians and Geotechnical Engineers.

The Board requested background information on the positions seeking equity adjustments, the overtime costs incurred by Electrical Engineers last fiscal year and information regarding staff repairing work performed by contractors.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. in the Administration Center Board Room.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Frank Mellon, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh 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 McIntosh led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Eileen Alford, Moraga resident commented on the findings from a report regarding the landslide on Augusta Drive in Moraga; and 2) Amy Bernstein Thomas (a.k.a. Felicia Laura Collier) commented on her current medical status after brain injury surgery and asked the Board to reconsider her settlement request and reinstating her retirement benefits.

Director Young thanked Ms. Alford for coming before the Board and requested an update from staff on the landslide.

CONSENT CALENDAR

- Item 14 was pulled from the Consent Calendar for comment.
 - Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Items 1-13 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 135-17** – Approved the Regular Meeting Minutes of July 25, 2017.
 2. The following correspondence was filed with the Board: **1)** Speakers' Bureau and Outreach Record CY17 as of August 2, 2017; **2)** Presentation entitled "Amendment to Water Theft Penalty Ordinance First Reading," dated August 8, 2017; **3)** Presentation depicting SB 623 Fund Contribution Comparison – Retail Water Customers and Agriculture, SB 623 Funding Categories and SWRCB Estimates, and SB 623 Agricultural Assessment and Enforcement Provisions; **4)** Letter dated February 7, 2017 from Dave Metz, Curt Below and Miranda Everitt of Fairbank, Maslin, Maulin, Metz and Associates to Interested Parties regarding California Voter Concerns About Drinking Water Quality; and **5)** Speaker notes from the following SWPAUW spokespersons: Ryan Wong, Billy Bakker, Khalifah Shakur, Sharon Reinbott, Susan Saukkomen and Ninh Thi-Nguyen.

3. **Motion No. 136-17** – Awarded a contract to the lowest responsive/responsible bidder Cal-Line, in an amount, after the addition of taxes, not to exceed \$179,715 for supplying three Bandit Intimidator 12XP towable wood chippers under Request for Quotation No. 1715.
4. **Motion No. 137-17** – Authorized an agreement beginning on or after August 10, 2017 with Foothill Portable Toilets in an amount not to exceed \$32,000 annually for reoccurring and emergency service and maintenance of portable and vault style chemical toilets at various District locations in the Mokelumne area for two years with four options to renew for an additional one-year period, for a total cost of \$192,000.
5. **Motion No. 138-17** – Authorized an agreement beginning on or after August 9, 2017 with Platinum Scaffolding Services, Inc., in an amount not to exceed \$324,000 to provide temporary interior scaffolding in up to six digesters at the Main Wastewater Treatment Plant.
6. **Motion No. 139-17** – Authorized an agreement with Rizzo Associates in an amount not to exceed \$217,000 for consultant services to perform safety inspections and safety evaluation reports that are required under the District’s license with the Federal Energy Regulatory Commission for Pardee and Camanche Dams.
7. **Motion No. 140-17** – Authorized an agreement on or after August 8, 2017 with Suarez & Munoz Construction, Inc., in an amount not to exceed \$455,406 for reestablishing the native landscape at Estates Reservoir site per Board Resolution No. 33960-13.
- 8.1. **Motion No. 141-17** – Awarded a sole source contract to Evoqua Water Technologies in an amount, after the addition of taxes, not to exceed \$725,000 for supplying a new membrane for the Digester No. 2 cover at the Main Wastewater Treatment Plant.
- 8.2. **Motion No. 142-17** – Authorized an agreement beginning on or after August 9, 2017 with Synagro-WWT, Inc., in an amount not to exceed \$446,300 for cleaning Digester No. 2 at the Main Wastewater Treatment Plant.
9. **Motion No. 143-17** – Approved the assignment of the contract for supply of reverse osmosis membrane elements for the Richmond Advanced Recycling Expansion Water Treatment Plant, originally awarded under Board Motion No. 190-14 on December 9, 2014 in the estimated total amount, after the addition of taxes, of \$990,483 from TCK Membrane America, Inc., to Toray Membrane USA, Inc.
10. **Motion No. 144-17** – Authorized execution of a Funding Agreement for Implementation of Levee Improvements and Protection of Aqueducts with Reclamation Districts Nos. 2024 (Orwood Palm), 2072 (Woodward), and 2038 (Lower Jones Tract) to define roles and responsibilities for accepting up to \$16 million in State of California Department of Water Resources funding available as an 85 percent state share (\$13.6 million) and 15 percent local share (\$2.4 million to be paid by EBMUD) for construction, administrative management, project management, and construction management for the projects.

11. **Motion No. 145-17** – Approved a Sixth 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 five months.
12. **Resolution No. 35053-17** – Authorizing Renewal Of The Alameda County Standard Operational Area Agreement That Provides For District Participation In The County’s Emergency Management Organization.
13. **Resolution No. 35054-17** – Fixing The Ad Valorem Tax Rate For Special District No. 1 (SD-1).
14. **Resolution No. 35055-17** – Appointing Gina Jenkins As Manager Of Maintenance Support (*effective August 21, 2017*).
 - Director Mellon congratulated Ms. Jenkins on her appointment. Ms. Jenkins thanked the Board and her staff for their support.
 - Motion by Director Mellon, seconded by Director Patterson, to approve the recommended action for Item 14, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
15. **Introduction and first reading of an ordinance amending Water Theft Penalty Ordinance No. 365-15 enacted by the Board of Directors on April 28, 2015, to reduce the applicable penalties for water theft resulting from meter tampering from \$1,000, \$2,000, \$3,000 to \$200, \$400, \$800 for first, second, and third offenses, respectively.**

Manager of Customer and Community Services Sherri A. Hong highlighted components of the current ordinance, the number of water theft occurrences to date and types of theft, the steps taken before assessing penalties to customers and the unintended impacts the ordinance penalties have had on low-income customers. She also described how water theft via lateral diversion and unauthorized hydrant use could impact public health and safety, water quality and District facilities. Based on input from the Finance/Administration Committee at its June 27, 2017 meeting, Ms. Hong presented a range of options for the Board to consider amending the Water Theft Penalty Ordinance. The Finance/Administration Committee recommended option “D” which would reduce the applicable penalties for water theft via meter tampering from \$1,000, \$2,000, \$3,000 to \$200, \$400, \$800 for first, second, and third offenses, respectively and retain the existing penalties for water theft from lateral diversions and unauthorized hydrant use. Following today’s first reading of the ordinance, a second reading and vote is scheduled for the September 12, 2017 Board meeting. The amendments would take effect 30 days after the revised ordinance’s passage, and the Municipal Utility District Act requires that the amendments be published once a week for two successive weeks in a newspaper of general circulation within the District’s service area.

- Addressing the Board were the following: 1) Zolboo Namkhaidoy, Clean Water Action, asked the Board to revoke the penalty and place a moratorium on water shutoffs; 2) Ryan Wong, Service Workers Project for Affordable Utilities and Water (SWPAUW), commented the Board should cancel the Water Theft Penalty Ordinance and place a moratorium on water shutoffs; 3) Queen Khalifah Shakur, SWPAUW, spoke on behalf of a customer who had her water shut off twice and also commented on the health impacts to customers without access to water; 4) Sharon Reinbott, SWPAUW, asked the Board to cancel the Water Theft Penalty Ordinance for residential customers and to place a moratorium on water shutoffs; 5) Susan Saukkomen, SWPAUW, commented on the lack of help she received from resource agencies, asked the Board to cancel the Water Theft Penalty Ordinance and to place a moratorium on water shutoffs; 6) Mat-T Scott, SWPAUW, spoke on behalf of Ninh Thi-Nguyen who had her water shut off twice and also asked the Board to cancel the Water Theft Penalty Ordinance and place a permanent moratorium on water shutoffs; 7) Billy Bakker, SWPAUW, asked the Board to take action to assist low-income customers and address water shutoffs; 8) Albert Kueffner, Alameda Interfaith Climate Action Network, commented on the Water Theft Penalty Ordinance and asked about District policies and procedures pertaining to water shutoffs; 9) Reverend Frederick Nicholas Oakley asked the Board to cancel the Water Theft Penalty Ordinance and place a moratorium on water shutoffs; and 10) Olivia Rodriguez, SWPAUW, asked the Board to cancel the Water Theft Penalty Ordinance and place a permanent moratorium on water shutoffs for families living 200 percent below the poverty level.

The Board discussed the information provided by Ms. Hong, the public comments, how other utilities address water theft, data regarding theft reduction since the ordinance was enacted, the length of time it takes customers to return to service after a shut off, and the impact of current District fees and charges assessed for turning off and restoring service.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended action for Item 15 to amend the ordinance to adopt option “D”.

There was additional Board discussion regarding the pros and cons of eliminating the penalties for meter tampering and possible legal ramifications if the District did not assess charges at all for water theft.

- Substitute Motion by Director Linney, seconded by Director Young, to amend the ordinance to eliminate penalty charges for meter tampering, reduce the applicable penalties for lateral diversions from \$1,000, \$2,000 and \$3,000 to \$200, \$400, and \$800 respectively, and keep the applicable penalties for unauthorized hydrant use at \$1,000, \$2,000 and \$3,000.

The vote on the Substitute Motion *failed* (4-3) by the following roll call vote: AYES (Katz, Linney, and Young); NOES (Coleman, Mellon, McIntosh, and Patterson); ABSTAIN (None); ABSENT (None).

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended action for Item 15 to amend the ordinance to adopt option “D”, carried (4-3) by the following roll call vote: AYES (Coleman, Mellon, McIntosh, and Patterson); NOES (Katz, Linney, and Young); ABSTAIN (None); ABSENT (None).
- **Ordinance No. 368-17** - An ordinance amending Water Theft Penalty Ordinance No. 365-15 enacted by the Board of Directors on April 28, 2015, to reduce the applicable penalties for water theft resulting from meter tampering from \$1,000, \$2,000, \$3,000 to \$200, \$400, \$800 for first, second, and third offenses, respectively. (*Introduction and first reading*)

DETERMINATION AND DISCUSSION

16. Legislative Update.

Legislative/Human Resources Committee Chair John A. Coleman reported that the Committee met this morning and reviewed Legislative Report No. 09-17. The Committee received information on H.R. 2862 (Simpson) Wildfire Disaster Funding Act and approved the staff recommended positions for the following bills: 1) SB 606 (Skinner) Water Conservation; 2) H.R. 1071 (Tonko) Assistance, Quality, and Affordability Act of 2017; 3) H.R. 2510 (DeFazio) Water Quality Protection and Job Creation Act of 2017; and 4) S. 1464 (Feinstein) Water Conservation Tax Parity Act.

- Motion by Director Coleman, seconded by Director Mellon, to approve the recommended positions in Legislative Report No. 09-17 for SB 606 (Skinner); H.R. 1071 (Tonko); H.R. 2510 (DeFazio); and S. 1464 (Feinstein) carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Manager of Legislative Affairs Marlaigne K. Dumaine reviewed SB 623 (Monning) which seeks to establish the Safe and Affordable Drinking Water Fund to provide grants and loans to assist communities and individual domestic well owners that rely on contaminated drinking water. She highlighted the five bill amendments requested by the Board during its July 25 meeting, provided information on the retail water user tax and agricultural tax provisions proposed to finance the fund, and reported on discussions with the bill author to date. The Board discussed in detail the merits of revising the position adopted on July 25 from “Support if Amended” on the version of the bill as it is proposed to be amended by the author to include a retail water users tax to a position of “Oppose Unless Amended (As Proposed to be Amended).”

- Addressing the Board were the following: 1) Jennifer Clary, Clean Water Action, provided additional background on the bill, explained the bill’s enforcement provisions for agricultural users and the work needed to develop provisions of a fee structure for retail water users; and 2) Alesandra Najera, Water Foundation shared poll results of 1,000 California water users on drinking water issues and thanked the Board for supporting SB 606.

- Motion by Director Coleman, seconded by Director Patterson, to revise the position adopted by the Board on July 25 from “Support if Amended” on the version of the bill as it is proposed to be amended by the author to include a retail water users tax to “Oppose Unless Amended (As Proposed to be Amended).”
- Substitute Motion by Director Young, seconded by Director Katz to keep the position adopted by the Board on July 25 with emphasis on EBMUD’s proposed amendment #2 which seeks to include language in the bill to limit water agencies’ exposure to other charges.

The vote on the Substitute Motion *failed* (4-3) by the following roll call vote: AYES (Katz, Linney, and Young); NOES (Coleman, Mellon, McIntosh, and Patterson); ABSTAIN (None); ABSENT (None).

- Motion by Director Coleman, seconded by Director Patterson, to revise the position adopted by the Board on July 25 to “Oppose Unless Amended (As Proposed to be Amended),” carried (4-3) by the following roll call vote: AYES (Coleman, Mellon, McIntosh, and Patterson); NOES (Katz, Linney, and Young); ABSTAIN (None); ABSENT (None).
- **Motion No. 146-17** – Received Legislative Report No. 09-17 and approved positions on the following bills: SUPPORT IF AMENDED - SB 606 (Skinner) Water Conservation; SUPPORT - H.R. 1071 (Tonko) Assistance, Quality and Affordability Act of 2017; SUPPORT - H.R. 2510 (DeFazio) Water Quality Protection and Job Creation Act of 2017; SUPPORT - S. 1464 (Feinstein) Water Conservation Tax Parity Act; OPPOSE UNLESS AMENDED (AS PROPOSED TO BE AMENDED) - SB 623 (Monning) Water Quality: Safe and Affordable Drinking Water Fund; and RECEIVED INFORMATION on H.R. 2862 (Simpson) Wildfire Disaster Funding Act.

17. **General Manager’s Report.**

General Manager Alexander R. Coate announced that the General Manager’s Monthly Report for July and a memo regarding the scheduled update to the District’s Strategic Plan for FY18 were in the Board’s packet. He also reminded Board members that their successor officer information is due to the District Secretary by September 12. The Board members requested copies of the successor officer information and frequently asked questions.

REPORTS AND DIRECTOR COMMENTS

18. **Committee Reports.**

- Filed with the Board were the Special Legislative/Human Resources, Finance/Administration and Sustainability/Energy Committee Minutes of July 25, 2017.

19. **Other Items for Future Consideration.**

- At the request of Director Coleman, staff will provide an information memo on protocol for Board members to follow when they have had communications with legislators, their staff or other similar ex parte communications that relate to matters under consideration by the Board.

20. **Director Comments.**

- Director Coleman reported attending/participating in the following events: The Upper Mokelumne River Watershed Authority Board meeting on July 28 at Pardee Reservoir; ACWA Executive Committee teleconference on July 31 in Oakland; EBMUD presentation to Contra Costa Realtors on August 1 in Walnut Creek; Contra Costa Mayors' Conference on August 3 in San Ramon; and a meeting with Local 2019 members on August 7 in Oakland. He reported on plans to attend/participate in the following upcoming events: ACWA Executive Committee teleconference meetings on August 14, August 21, August 28, and September 5 in Oakland and on September 11 in Sacramento; EBMUD East Bay Leadership Council Water Task Force meeting on August 15 in Walnut Creek; EBMUD East Bay Economic Development Alliance Legislative and Advocacy Committee meeting on August 17 in Oakland; Lafayette Chamber of Commerce meeting on August 25 in Lafayette; and ACWA Nominating Committee meetings on September 6 in Oakland and on September 11 in Sacramento.
- Director Katz had no report.
- Director Linney had no report.
- Director Mellon had no report.
- Director Patterson had no report.
- Director Young had no report.
- President McIntosh had no report.

ADJOURNMENT

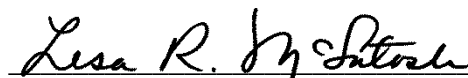
President McIntosh adjourned the meeting at 4:47 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: September 12, 2017



Lesa R. McIntosh, President of the Board