

MINUTES

Tuesday, December 14, 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 10:40 a.m. He announced that in accordance with Government Code section 54953(e), 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, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Frank Mellon joined at 10:42 a.m. and Director Lesa R. McIntosh joined at 10:45 a.m. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Assistant General Counsel Lourdes Matthew (Items 1a and 2), Director of Finance Sophia D. Skoda (Items 1a and 2), Director of Human Resources Laura A. Acosta (Item 2), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Eric O. Larsen, President, AFSCME Local 444 commented on inflation, cost of living, the December CPI and the most recent offer from District negotiators; 2) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on a member involved in a fact finding investigation and asked the District to apologize for mistakenly including the member in the process; and 3) Ivette Rivera, EBMUD Gardener Foreman, commented on the lawsuits filed by former employees Ayriel Bland and Saji Pierce. Secretary of the District Rischa S. Cole read comments into the record regarding negotiations, recruitment and retention, and equity adjustments for Information Technology staff from the following: Harry Richardson, Supervising Systems Programmer; Kevin Fitzsimmons, Information Services Supervisor; Andy Szeto, Information Services Supervisor; Tom Canale, Information Services Supervisor; Kevin Kim, IT Engineer II; Michael Leong, IT Engineer II; Henry Lavigne, Senior IT Engineer; David Valenzuela, Senior IT Engineer; John Pennington, Senior IT Engineer; Rex Jou, Senior IT Engineer; Susan Lord, Senior IT Engineer; Brandon Lee, Senior IT Engineer; Mark Smith, Senior IT Engineer; Anonymous Employee; Sean McDonough, Senior IT Engineer; Hai Lin, Senior IT Engineer; Ross Hoyt, Senior IT Engineer; Ronald Brunner, Senior IT Engineer; Spencer Cowenhoven, Senior IT Engineer; Anna Lee, Senior IT Engineer; and Yu Lin, Senior IT Engineer.

President Linney requested an update on the investigation referenced by George Cleveland.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and said the Regular Business Meeting would convene at 1:15 p.m. The Board convened for discussion (remotely).

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. He announced that in accordance with Government Code section 54953(e), 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.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Nick Lawrence commented on continuing unsafe conditions on Tappan Terrace in Orinda; 2) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on a member required to use sick leave due to COVID-19 and the vaccination status of the General Manager and Board members; 3) Kelly A. commented on remarks from EBMUD Board members regarding public comment from non-ratepayers; and 4) Ivette Rivera, EBMUD Gardener Foreman commented on the lawsuits filed by former employees Ayriel Bland and Saji Pierce.

In response to Kelly A.'s comments, President Linney stated the Board of Directors welcomes public comments.

CONSENT CALENDAR

- Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Items 1-11 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. 210-21** – Approved the Regular Meeting Minutes of November 23, 2021 and the Special Closed Session Meeting Minutes of December 2, 2021.
2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Close Out of Emergency Declaration Oakport Wet Weather Facility Chemical Tank Failure” dated December 14, 2021; **2)** Presentation entitled, “East Bay Plain Subbasin Groundwater Sustainability Plan,” dated December 14, 2021; **3)** Presentation entitled, “Drought Update,” dated December 14, 2021; **4)** Presentation entitled, “Water Supply Update,” dated December 14, 2021; **5)** Presentation entitled, “EBMUD Principles for Potential Wheeling Agreement with Marin Water,” dated December 14, 2021; **6)** Presentation entitled, “Resolution Continuing Virtual Meetings of the Board,” dated December 14, 2021; **7)** Oakland Tribune Proof of Publication of the Notice of Public Hearing to Consider Adopting the East Bay Plain Subbasin Groundwater Sustainability Plan (Legal No. 6626856 published November 26 and December 3, 2021); **8)** West County Times Proof of Publication of the Notice of Public Hearing to Consider Adopting the East Bay Plain Subbasin Groundwater Sustainability Plan (Legal No. 6626856 published November 26 and December 3, 2021); and **9)** Written comments (undated) from the following District employees regarding negotiations, recruitment and retention, and equity adjustments for Information Technology staff: Harry Richardson, Supervising Systems Programmer; Kevin Fitzsimmons, Information Services Supervisor; Andy Szeto, Information Services Supervisor; Tom Canale, Information Services Supervisor; Kevin Kim, IT Engineer II; Michael Leong, IT Engineer II; Henry Lavigne, Senior IT Engineer; David Valenzuela, Senior IT Engineer; John Pennington, Senior IT Engineer; Rex Jou, Senior IT Engineer; Susan Lord, Senior IT Engineer; Brandon Lee, Senior IT Engineer; Mark Smith, Senior IT Engineer; Anonymous Employee; Sean McDonough, Senior IT Engineer; Hai Lin, Senior IT Engineer; Ross Hoyt, Senior IT Engineer; Ronald Brunner, Senior IT Engineer; Spencer Cowenhoven, Senior IT Engineer; Anna Lee, Senior IT Engineer; and Yu Lin, Senior IT Engineer.
3. **Motion No. 211-21** – Authorized an agreement beginning on or after December 14, 2021 with ADS Corp. in an amount not to exceed \$9,609,396 for the Consent Decree Performance Evaluation Plan Flow and Precipitation Monitoring.
4. **Motion No. 212-21** – Authorized agreements beginning on or after December 14, 2021 with Fehr & Peers and Sandis Civil Engineers Surveyors Planners in an aggregate amount not to exceed \$400,000 for two years for preparation of signed, stamped, and site-specific traffic control plans.
5. **Motion No. 213-21** – Authorized an agreement beginning on or after December 14, 2021 with National Plant Services, Inc. for five years for a total amount not to exceed \$3,000,000 for sanitary sewer inspection and cleaning services in support of the East Bay communities’ infiltration and inflow reduction activities in the communities’ collection systems.
6. **Motion No. 214-21** – Authorized agreements beginning on or after January 1, 2022 with Occupational Health Centers of California dba Concentra Medical Centers, Emeryville Occupational Medical Center, Kaiser Permanente On-the-Job, Mobile-Med Work Health Solutions, Inc., and Alshifa Medical Group dba Trinity Urgent Care & Occupational Health for three years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$250,000 for providing medical evaluations required by federal and state regulations.

- 7.1 **Motion No. 215-21** – Awarded a contract to the lowest responsive/responsible bidder, JMB Construction, Inc., in an amount not to exceed \$8,433,652 for construction of the Special Structures Rehabilitation Phase 1 project under Specification SD-404.
- 7.2 **Motion No. 216-21** - Authorized an amendment to the agreement previously authorized under Board Motion No. 191-20 with CDM Smith, Inc. to increase the agreement amount by \$508,612 to a total amount not to exceed \$1,502,817 and extend the agreement term to December 31, 2023 for additional construction inspection and engineering services during construction for the Special Structures Rehabilitation Phase 1 Project.
8. **Motion No. 217-21** – Authorized the General Manager to execute an option agreement with Sycamore Mutual Water Company (Sycamore) at a maximum total cost of \$230,000 whereby EBMUD would secure the right of first refusal to negotiate with Sycamore for the purchase of up to 6,000 acre-feet of transfer water in 2022.
9. **Motion No. 218-21** – Authorized a second amendment to the Memorandum of Agreement (MOA) for the Bay Area Regional Reliability partnership to extend the term of the MOA through March 31, 2023, update the signatory authorities and the delegated contacts, and include Marin Municipal Water District as a participating partner to work collaboratively to develop the Bay Area Shared Water Access Program.
10. **Motion No. 219-21** – Authorized the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett, LLP, for specialized legal services related to construction, public contracts and procurement, claims, intellectual property and technology matters, tax, public pension law, labor and employment, and litigation matters in an additional amount not to exceed \$250,000.
11. **Adopt resolutions to amend and restate the East Bay Municipal Utility District 401(a), 401(k) and 457 Deferred Compensation Plans to comply with tax law requirements enacted under the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019.**

Resolution No. 35256-21 – Amending and Restating the East Bay Municipal Utility District 401(a) Plan.

Resolution No. 35257-21 – Amending and Restating the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan.

Resolution No. 35258-21 – Amending and Restating the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust.

PUBLIC HEARING

12a. Conduct a public hearing to receive comments on the East Bay Plain Subbasin Groundwater Sustainability Plan.

President Linney opened the public hearing at 1:33 p.m. He announced the hearing is to receive comments on the East Bay Plain Subbasin Groundwater Sustainability Plan (GSP) pursuant to the Sustainable Groundwater Management Act (SGMA).

Senior Civil Engineer Bradley M. Ledesma and Associate Civil Engineer Grace W. Su presented the update. EBMUD and the City of Hayward (Hayward) are the designated Groundwater Sustainability Agencies (GSAs) for the Subbasin, and through an existing cooperating agreement, have completed the GSP. The GSP was developed and written to meet California Code of Regulations and using the Department of Water Resource's best management practices and guidance documents. The GSP identifies sustainable management criteria that are used to establish whether undesirable results have occurred within the following six sustainability indicators: 1) chronic lowering groundwater levels; 2) reduction in groundwater storage; 3) seawater intrusion; 4) degradation of water quality; 5) land subsidence; and 6) depletion of interconnected surface water. The criteria in the GSP were based on the best available data and science; however, they will change over time as identified data gaps are filled. The GSP also evaluated a future scenario relative to the sustainable management criteria that accounts for climate change, land use changes, and future groundwater pumping. It also outlines ongoing management actions that Hayward and the District will be responsible for implementing to monitor the Subbasin and ensure that sustainable management criteria are met to avoid undesirable results. Mr. Ledesma highlighted stakeholder and public outreach efforts conducted throughout the GSP development process. EBMUD and Hayward provided 90-day notice on September 7, 2021 to the cities and counties within the geographic area covered by the GSP of the intent to hold a public hearing and adopt the GSP. The draft GSP was available for public review from September 17, 2021 through November 1, 2021 and remains posted on each agency's SGMA website. Ms. Su highlighted key points in the GSP and in the comment letters received on the draft GSP. The comments and associated responses are included as an appendix in the GSP. Mr. Ledesma noted a public hearing and Board adoption of the GSP are required before the District can submit the final GSP to the Department of Water Resources by January 31, 2022 as required under the SGMA. Mr. Ledesma and Ms. Su responded to Board questions regarding entities besides state agencies that may have commented on or participated in the development of the GSP; the number of wells in the San Leandro/San Lorenzo area; the status of the GSP for the basin where the Demonstration Recharge, Extraction and Aquifer Management Project is located; capacity in the District's Bayside Groundwater facility in wet years; the potential for increased contaminated zones due to climate change; Hayward's estimated costs for monitoring actions; and whether Hayward has drawn water from the Subbasin.

President Linney asked for public comment. There were no comments. President Linney closed the public hearing at 1:55 p.m.

12b. Adopt the East Bay Plain Subbasin Groundwater Sustainability Plan prepared pursuant to the Sustainable Groundwater Management Act.

- Motion by Director Mellon, seconded by Patterson to approve the recommended actions for Item 12b 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. 35259-21 – Adopting East Bay Plain Subbasin Groundwater Sustainability Plan.

DETERMINATION AND DISCUSSION

13. Appointment to the Position of Assistant Attorney.

General Counsel Derek T. McDonald introduced Ruby Acevedo as the candidate for the position of Assistant Attorney of the District with the title of Attorney II and highlighted her background and experience.

- Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 13 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. 35260-21 – Appointing Ruby Acevedo to the Position of Assistant Attorney of the District With the Title of Attorney II. (*effective December 20, 2021*)

The Board welcomed Ms. Acevedo and commented on how her experience working in the public interest will benefit various District efforts. Ms. Acevedo thanked the Board and said she looks forward to working at the District.

14. Declare an end to the District emergency initiated on November 3, 2021 and ratified on November 9, 2021 under Board Resolution No. 35253-21 to install temporary chemical storage tanks at the Oakport Wet Weather Facility.

Director of Wastewater Eileen M. White presented an update on actions to address the catastrophic failure of one of the three 10,000-gallon sodium hypochlorite storage tanks at the Oakport Wet Weather Facility (WWF). The incident occurred on Monday, November 1, 2021 and it was determined the tank could not be repaired. On November 3, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity. The Board ratified the emergency declaration at its Regular meeting on November 9. Ms. White explained sodium hypochlorite dosing is needed to disinfect the flow that enters the Oakport WWF and the failure of one tank creates a significant shortage of chemical supply at the WWF. Work by the contractor and District staff to install a temporary storage system began on November 11. The contractor removed the failed tank and replaced it with a spare tank from the District's Orinda Water Treatment Plant and provided a trailer of chemicals to directly fill the tanks. District staff installed the secondary containment piping, chemical pump and eye wash station; performed the electrical and instrumentation work for the spare tank; and managed chemical procurement. The replacement tank was placed into service on November 30 and the temporary tanks were placed into service on December 9. Total estimated

costs for this work are \$240,000. Ms. White said staff will continue reviewing preparedness for wet weather events and implement lessons learned across the wastewater system. She acknowledged the various District workgroups that assisted with efforts to address this issue. In response to Board questions, Ms. White explained aging infrastructure caused the failure and said the repair costs would most likely not qualify for reimbursement from President Biden's Infrastructure Investment and Jobs Act.

- Motion by Director Coleman, seconded by Patterson to approve the recommended actions for Item 14 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. 35261-21 – Resolution Terminating the Existence of an East Bay Municipal Utility District Emergency.

15. **Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors via teleconference under Government Code section 54953(e) until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.**

Director of Operations and Maintenance David A. Briggs provided a COVID-19 update which included the most recent data on positive cases in Alameda and Contra counties; the number of positive employee (160) and contractor (23) cases at the District; the number of staff currently quarantined or in isolation and unable to telecommute (12); and said staff was notified in early December about plans for those that have been telecommuting full-time to return to the office 1-2 days per week beginning January 18. Mr. Briggs discussed key points of the Safe Return to Workplace plan and clarified this date could change if there is a winter surge in positive cases. Additional information will be provided when the District begins transitioning to a long-term, post-pandemic plan. He reviewed Section 54953(e) of the Ralph M. Brown Act and the safety protocols that will be in place as the Board transitions back to in-person meetings in January. General Manager Clifford C. Chan said that although the Board is planning to attend meetings in person in January, staff recommends adopting the resolution to allow the Board to continue to hold remote meetings in the event there is a winter surge in positive COVID-19 cases. General Manager Chan responded to questions regarding alternative office spaces for Board members for social distancing purposes and said he will contact Board members before January 11 to confirm if meetings will be in person. There was discussion regarding rapid antigen tests for Board members and staff that will be in close contact during Board meetings and comments on whether unvaccinated Board members should participate in person on January 11.

- Addressing the Board were the following: 1) George D. Cleveland, Chief Steward, AFSCME Local 2019 clarified remarks made during public comment earlier regarding the vaccination status of the General Manager and Board members did not mean to imply a Board member was not vaccinated but to point out Board members should have met the November 1 deadline to provide proof of vaccination; and 2) Gary Walters II, AFSCME Local 2019 Contract Negotiation Team member and ratepayer expressed concern regarding comments from the Board on whether unvaccinated Board members should participate in meetings in person.

- Motion by Director Coleman, seconded by Director Young to approve the recommended actions for Item 15 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. 35262-21 - Authorizing Continued Utilization of Teleconferencing for Meetings of the East Bay Municipal Utility District Board of Directors (*Under Assembly Bill 361*).

16. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine said the second year of the state legislative session will focus on approximately 1,500 two-year bills, provided an update on the state budget, and on Assembly members planning to resign or not seek re-election. She highlighted seven state legislative initiatives for 2022 for Board review and consideration: 1) Climate Change – advance EBMUD’s interests related to climate change and climate adaptation discussions; 2) Emerging Contaminants – advance EBMUD’s interests in legislative and policy discussions and seek opportunities to support efforts to eliminate the use of Per- and Polyfluoroalkyl Substances (PFAS) and other emerging contaminants; 3) Forest Health/Wildfire Prevention and Response – advance EBMUD’s interests in efforts to address forest health and vegetation management in the context of water and wastewater service; 4) Housing Fees – seek constructive ways to protect and advance EBMUD’s interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Racial Equity and Justice – look for opportunities to advance EBMUD’s interests as the legislature continues to consider racial equity and justice issues in the context of policy development in areas relevant to EBMUD priorities; 6) Ratepayer Assistance – seek constructive ways to advance EBMUD’s interests as the administration and legislature consider ways to provide ongoing as well as additional pandemic-related assistance to water and wastewater customers; and 7) Water Supply Reliability and Resiliency – protect and advance EBMUD’s interests in the context of water supply reliability and resiliency, including the use of recycled water, and the Mokelumne River fishery. Ms. Dumaine noted the climate change initiative does not cover wildfire or water which are covered under initiatives 3 and 7. The Board discussed the initiatives and asked that the District act as a resource as appropriate when the legislature begins discussing workforce transitions for those employed in the fossil fuels industry; continue monitoring and supporting ongoing funding for the infill/infrastructure program; explore the feasibility of designating a portion of surplus budget funds as start-up funding for an ongoing statewide ratepayer assistance program; and share the District’s experience accessing funding from the California Water and Wastewater Arrearage Payment Program with program administrators for potential future program improvements. President Linney asked if staff could provide information on the Water Infrastructure Funding Act of 2022, and disclosed he is working to defeat the initiative. Ms. Dumaine explained staff’s process for presenting initiatives to the Board and said at this time, staff could provide information on the text but are unable to analyze the initiative at this time. In conclusion, she provided a brief update on federal legislative activities. Legislative/Human Resource Committee member Lesa R. McIntosh reported the Committee met earlier in the day and voted to support the seven state legislative initiatives.

- Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 16 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 220-21 – Approved the state legislative initiatives for the 2022 Legislative Year: 1) Climate Change – advance EBMUD’s interests related to climate change and climate adaptation discussions; 2) Emerging Contaminants – advance EBMUD’s interests in legislative and policy discussions and seek opportunities to support efforts to eliminate the use of Per- and Polyfluoroalkyl Substances (PFAS) and other emerging contaminants; 3) Forest Health/Wildfire Prevention and Response – advance EBMUD’s interests in efforts to address forest health and vegetation management in the context of water and wastewater service; 4) Housing Fees – seek constructive ways to protect and advance EBMUD’s interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Racial Equity and Justice – look for opportunities to advance EBMUD’s interests as the legislature continues to consider racial equity and justice issues in the context of policy development in areas relevant to EBMUD priorities; 6) Ratepayer Assistance – seek constructive ways to advance EBMUD’s interests as the administration and legislature consider ways to provide ongoing as well as additional pandemic-related assistance to water and wastewater customers; and 7) Water Supply Reliability and Resiliency – protect and advance EBMUD’s interests in the context of water supply reliability and resiliency, including the use of recycled water, and the Mokelumne River fishery.

- Director Coleman left the meeting at 2:45 p.m. and rejoined at 2:46 p.m.

17.1- **Adopt the Proposed Wheeling Principles (EBMUD Principles) to govern negotiation of a**
17.2 **potential wheeling agreement with Marin Municipal Water District (Marin Water) in**
furtherance of Marin Water’s Marin East Bay Emergency Intertie Project; and authorize
the General Manager to begin negotiating a wheeling agreement with Marin Water based on
the EBMUD Principles for potential future consideration by the Board.

General Manager Clifford C. Chan introduced the item and Director of Water and Natural Resources Michael T. Tognolini presented an update on Marin Water’s water supply as of December 7, the recent California Environmental Quality Act challenge from the North Coast Rivers Alliance to Marin Water, and an upcoming meeting for the Ad Hoc Committee appointed by the Mayor of Richmond to review Marin Water’s project. Mr. Tognolini reviewed the following proposed EBMUD Principles which were developed to protect EBMUD’s interests and its customers if EBMUD determines that it can wheel transfer water for Marin Water in 2022 and include feedback received from the Planning Committee and Board in November: 1) No financial impact to EBMUD, full cost recovery (e.g., staff time, O&M costs, construction costs, recovery of capital investments; 2) No water quality impacts to EBMUD customers; 3) No reduced level of service to EBMUD customers; 4) No EBMUD water supplies (Mokelumne, local, Central Valley Project) will be sold to Marin Water; 5) No impact to EBMUD’s ability to prioritize purchase of transfer water for EBMUD customers. Marin Water will not compete with EBMUD for water transfers; 6) EBMUD has the right to terminate wheeling agreement for any reasonable cause as determined by EBMUD (operational, staff resources, etc.); 7) No opposition to project from the City of Richmond; 8) Marin Water performs substantial engagement in Richmond and West Contra Costa County and includes EBMUD in meetings; 9) Mitigation for community impacts in Richmond and EBMUD’s service area considered through an equity lens with follow-through on commitments; 10) Marin Water should support EBMUD customers as a community partner. Examples include a potential contribution to EBMUD Customer Assistance Program or Water Lifeline Program, full street paving for construction activities, and/or other partnerships; 11) If EBMUD is asking for customer demand reductions, Marin Water must

achieve water efficiency levels equivalent to EBMUD for EBMUD to support Marin Water in meeting public health and safety needs; 12) EBMUD will make its own determination on California Environmental Quality Act compliance; 13) No significant unmitigated impacts to native fish species; and 14) If constructed, operation of emergency intertie may only occur when Marin Water has declared a drought emergency and EBMUD principles for wheeling are met. Staff is recommending the Board adopt the EBMUD Principles to govern negotiation of a potential wheeling agreement with Marin Water regarding Marin Water's Marin East Bay Emergency Intertie Project. There was discussion regarding the status of Marin Water's Principles and whether EBMUD needed to adopt the EBMUD Principles before Marin Water adopts principles. Director Coleman expressed continued concern that EBMUD Principle 7 – No opposition to project from the City of Richmond – could set a precedent and be used against EBMUD in negotiations on future projects. There was considerable Board discussion and input from General Manager Chan and General Counsel Derek T. McDonald on Principle 7. After additional discussion, the decision was made to keep Principle 7 in the document and to table Item 17.2 for a future meeting. General Manager Chan clarified staff would not bring Item 17.2 to the Board for consideration until Marin Water has approved principles and provided them to the District.

- Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 17.1 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 221-21 – Adopted the Proposed Wheeling Principles (EBMUD Principles) to govern negotiation of a potential wheeling agreement with Marin Municipal Water District (Marin Water) in furtherance of Marin Water's Marin East Bay Emergency Intertie Project.

Secretary of the District Rischa S. Cole asked the Board to consider making a motion to table Item 17.2 for a future meeting.

- Motion by Director McIntosh, seconded by Director Young to table Item 17.2 for a future meeting carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 222-21 – Tabled authorizing the General Manager to begin negotiating a wheeling agreement with Marin Water based on the EBMUD Principles for potential future consideration by the Board until a future meeting.

18. **General Manager's Report.**

Water Supply Update

Director of Operations and Maintenance David A. Briggs presented the update. He reviewed Upper Mokelumne and local precipitation, snowpack water content and total unimpaired runoff data for Water Year 2021 (October 1, 2020 – September 30, 2021) and reported the end of water year storage was 437,000 acre-feet. He reviewed the following information as of December 7: the District's current water supply and precipitation in the Mokelumne and East Bay and snow depth at Caples Lake. He said total system storage from all reservoirs is 442,410

acre-feet and concluded with an overview of water supply projections for the country and the District for Rainfall Year 2022.

2021 Drought Update

Director of Operations and Maintenance David A. Briggs reported between October 4 and December 5, the District diverted 15,500 acre-feet (AF) of its 33,250 AF Central Valley Project (CVP) allocation and that diversions are scheduled to continue until February 2022. The U.S. Bureau of Reclamation has indicated to CVP contractors that 2022 allocations could be extremely limited if dry conditions persist.

Manager of Water Supply Linda H. Hu provided an update on 2022 water transfers. Over the upcoming months, staff will present water transfer options and agreements to the Board for consideration, including a temporary water transfer option agreement with Yuba County Water Agency (YCWA) and Contra Costa Water District (CCWD). The agreement would provide EBMUD the option to purchase up to 10,000 AF of transfer water from YCWA in calendar year 2022 plus any additional YCWA water which becomes available to EBMUD.

Engineering Manager Lena L. Tam reviewed state and federal activities since August 20 and reported the District has been complying with the state's order to curtail diversions on the Mokelumne River. At the end of November, the state notified water users of plans to adopt rules to reduce water waste and in early December, the Department of Water Resources announced there would be no water allocations except for public health and safety needs for certain CVP contractors. She discussed the District's water shortage response actions noting the State Water Resources Control Board (SWRCB) has indicated it may consider imposing mandatory water rationing if dry conditions persist.

Manager of Water Conservation Alice E. Towey reviewed actions the District would take if the SWRCB imposes rationing. The Board would be required to implement a mandatory rationing goal, declare a water shortage emergency, and declare a Stage 2 or higher drought. Regulations that prohibit specific activities would be enacted and the District's Excessive Water Use Penalty Ordinance would go into effect. She discussed the planned outreach, messaging and conservation programming that would be implemented to support customers and concluded with drought outreach efforts to date, media activity and plans being developed if dry conditions persist in 2022.

Monthly Report – November 2021

General Manager Clifford C. Chan pointed out the report includes information on efforts to secure funding for customer arrearages. The District submitted its California Water and Wastewater Arrearage Payment Program application to the SWRCB for \$9,631,323.40 in drinking water arrearages for 10,900 customers in arrears and an additional 9,450 accounts that received assistance via the District's Customer Assistance Program during the pandemic. He said the state's moratorium for water shutoffs is set to end on December 31, 2021 but the District does not plan to transition to implementing flow restrictors until arrearages are paid and the Board receives an additional update.

REPORTS AND DIRECTOR COMMENTS

19. Committee Reports.

- Filed with the Board were the Minutes for the November 23, 2021 Redistricting Ad Hoc Committee and Finance/Administration Committee meetings.
- Planning Committee Chair Marguerite Young reported the Committee met earlier (remotely) and received updates on the DSRSD/EBMUD Recycled Water Authority (DERWA) Side Agreement; the Oakland Inner Harbor Pipeline Crossing Update; and the Fiscal Year 2021 Annual Readiness Report.
- Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier (remotely) and received updates on the State Legislative Initiatives for 2022 Legislative Year and the Contract Equity Program Annual Report for Fiscal Year 2021.
- Los Vaqueros Reservoir JPA member John A. Coleman reported the JPA met on December 8 regarding the following: Election or Appointment of Authority Secretary; Consideration of an Administrative Agreement between the JPA and Contra Costa Water District; Establishing Committees; Discussion of Board Policies and Action Calendar; Discussion of Director and Alternate Director Roles; Discussion of Alternatives for Authority Liability and Errors and Omissions Insurance; Planning the 2022 Meeting Schedule; and Discussion of Proposed Revisions to the Authority Fact Sheet.

20. Other Items for Future Consideration.

None.

21. Director Comments.

- Director Coleman reported participating in the virtual East Bay Leadership Council Water Task Force meeting on December 8 and plans to participate in the virtual Los Vaqueros Reservoir JPA meeting on January 12, present at the virtual Walnut Creek Rotary meeting on January 18, and attend the UMRWA Board meeting at Pardee on January 28.
- Director Mellon reported attending the memorial services for former Alameda County Supervisor Wilma Chan in Oakland on December 5.
- Director Patterson reported attending the memorial services for former Alameda County Supervisor Wilma Chan (virtually) on December 5.
- President Linney reported attending the memorial services for former Alameda County Supervisor Wilma Chan (virtually) on December 5.
- Directors Katz, McIntosh, and Young had no reports.

ADJOURNMENT

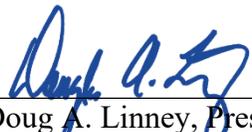
President Linney adjourned the meeting at 4:16 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: January 11, 2022



Doug A. Linney, President of the Board