

MINUTES

Tuesday, October 12, 2021
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California
Virtual

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 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, 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, Assistant General Counsel Lourdes Matthew (Items 1 and 2), Director of Finance Sophia D. Skoda (Item 1), Manager of Human Resources Laura A. Acosta (Items 1 and 2), Manager of Employee Relations Niger M. Edwards (Items 1 and 2), Director of Operations and Maintenance David A. Briggs (Item 2), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera, EBMUD employee commented on documents received in response to a recent Public Records Act request submitted to the District, Public Records Act exemptions for performance pay-related records, and government tort claims; 2) Nick Lawrence commented on continuing unsafe conditions on Tappan Terrace in Orinda; and 3) Eric O. Larsen, President, AFSCME Local 444 commented on the District's vaccination policy and asked the Board to consider granting FMLA leave and/or long-term leave without pay to employees as an alternative to being charged with insubordination for failure to follow the policy.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:32 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.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

President Linney announced that public comment is an important part of EBMUD's Board meetings and asked that Board members, staff and the public show mutual respect when providing or responding to public comment.

- Addressing the Board were the following: 1) Kelly Abrams commented on the FAIR Maps Act, EBMUD's redistricting guidelines regarding Board member residences being maintained within their current wards, and incumbent protection; and 2) Ivette Rivera, EBMUD employee commented on performance pay data received in response to a recent Public Records Act request submitted to the District and government tort claims filed against the District by former employees Ayriel Bland and Saji Pierce, and read excerpts from a tort claim filed by Saji Pierce.

CONSENT CALENDAR

- Items 3 and 7 were pulled from the Consent Calendar for discussion.
 - Motion by Director Coleman, seconded by Director Mellon to approve the recommended actions for Items 1-2, 4-6 and 8-9 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. 171-21** – Approved the Regular Meeting Minutes of September 28, 2021.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Coronavirus Update," dated October 12, 2021; **2)** Presentation entitled, "Drought Update," dated October 12, 2021; **3)** Presentation entitled, "Mokelumne Aqueduct No. 2 (MOK2) Leak Close Out of Emergency Declaration," dated October 12, 2021; and **4)** Presentation entitled, "Racial Equity and Justice Project and Diversity, Equity, and Inclusion Strategic Plan Update," dated October 12, 2021.

3. **Motion No. 177-21** – Awarded a contract to the lowest responsive/responsible bidder, McGuire and Hester, in an amount not to exceed \$1,495,000 for construction of District-Owned North Orinda Sports Fields Temporary Maintenance Facilities, and consented to withdrawal of the low bid of Angotti & Reilly, Inc., under Specification 2178.
 - Director Patterson pulled Item 3 to ask for clarification regarding the withdrawal of the low bid. Director of Engineering and Construction Olujimi O. Yoloye clarified the low bidder requested the withdrawal because of a clerical error that led to an incorrect bid amount.
 - Motion by Director Patterson, seconded by Director Mellon to approve the recommended actions for Item 3 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
4. **Motion No. 172-21** – Awarded a sole source contract to Tibco Software, Inc., to supply a license and technical support for JasperReports Enterprise software for three years, beginning on or after October 13, 2021 for a total cost, after the addition of taxes, not to exceed \$64,000.
5. **Motion No. 173-21** – Authorized an agreement beginning on or after October 12, 2021 with CPM Associates, Inc., in an amount not to exceed \$166,856 to provide construction management support services consisting of construction inspection for installation of 2,500 feet of recycled water pipeline as part of Alameda County Transportation Commission and Caltrans Interstate 80/Gilman Street Interchange Improvements Project in Berkeley.
6. **Motion No. 174-21** – Authorized an amendment to the agreement previously authorized under Board Motion No. 226-20 with The Tharpe Company, Inc., dba Engage2Excel to increase the agreement amount by \$95,000 to a total amount not to exceed \$160,000 and extend the agreement term to September 30, 2022, for the provision of employee service awards and an online peer recognition platform per the District's Employee Recognition and Service Awards Program.
7. **Motion No. 178-21** – Authorized an amendment to the agreement previously authorized under Board Motion No. 062-18 with West Yost & Associates to increase the agreement amount by \$276,369 to a total amount not to exceed \$1,852,946 and extend the agreement term to December 31, 2023 for additional construction inspection and engineering services during construction for the Pump Station M Rehabilitation and Force Main Investigation Project.
 - Eric O. Larsen, President, AFSCME Local 444 commented the union did not receive advance notification on this contract and said Local 444 would object to their members being supervised or taking direction from contractors. Director Coleman commented on the cost overruns and the multiple amendments to the agreement for this project. He requested information on District projects with change orders of 25 percent or more over the last 2-3 years including details on why the change orders were needed, and actions taken to address the issue. Director of Wastewater Eileen M. White explained some of the reasons for the cost increases on the project and clarified the work under the proposed amendment will be completed by the contractor and not by Local 444 members, which is why Local 444 was not notified. There was considerable discussion on how the District reviews specifications and designs for systems or facilities that are not originally built or maintained by the District like Pump Station M; whether Local 444 should have been notified regarding the proposed agreement amendment; clarification on what work will be performed by staff and the contractors and what portions of the system will be operated

and constructed by the contractor to limit District liability; confirmation that approval of the proposed agreement amendment would not change whether the facility is ultimately operated by Local 444 members or the contractor; instances where the District declined to take over a site or facility from another party until the site or facility had been upgraded to District standards; and whether this issue should be discussed at a Contracting Out Committee meeting. Mr. Larsen initially stated Local 444 objects to the proposed agreement amendment because the contractors will be operating the bypass equipment, which is work that would be performed by Local 444 members and that the union should have been notified of the previous agreement regarding the construction and operation of the facility; however, he followed up and clarified the union had been notified about the original project in July 2020 but that the union will need time to review that notification to see if it mentions operation of the bypass facility. Mr. Larsen asked that this issue be discussed at the Contracting Out Committee. After additional discussion, staff agreed to meet with Local 444 to discuss the project.

- Motion by Director Young, seconded by Director Coleman to approve the recommended actions for Item 7 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
8. **Motion No. 175-21** – Authorized an amendment to an agreement previously authorized under Board Resolution No. 35171-20 with WorkCare, Inc., to increase the agreement amount by \$250,000 to a total amount not to exceed \$750,000 to provide COVID-19 self-collection test kits and physician oversight.
9. **Motion No. 176-21** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed \$75,000.

DETERMINATION AND DISCUSSION

10. **Declare an end to the District emergency initiated on August 18, 2021 and ratified on August 24, 2021 under Board Resolution No. 35244-21 to repair Mokelumne Aqueduct No. 2.**

General Manager Clifford C. Chan announced District staff and a contractor completed emergency repairs on a leak on Mokelumne Aqueduct No. 2 on September 25, 2021. Director of Engineering and Construction Olujimi O. Yoloye presented an overview of the project. On August 6, 2021, staff was notified of a leak on the aqueduct at Station 1620 located in the City of Stockton and temporarily repaired the leak. On August 9, staff assessed the aqueduct and discovered corrosion at the leak site which is directly under a Union Pacific Railroad (UPRR) bridge. On August 18, to expedite repairs to the aqueduct, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity. The Board ratified the emergency declaration at its Regular meeting on August 24. Mr. Yoloye discussed the leak location and surrounding facilities and the repair timeline, and reviewed visuals of the repair plan and process. Staff and the contractors coordinated closely with UPRR to minimize disruptions and impacts to UPRR's operations. Total estimated costs for the leak repair and site restoration are approximately \$1,600,000. These costs include District labor and materials, additional energy costs, construction charges to date, pending payments, and other estimated costs. The Board is being asked to adopt a resolution to declare an end to the District emergency. He reviewed upcoming relining work on Mokelumne Aqueduct No. 2 during the winter seasons in

2022-2023 and upcoming recoating and backfill work on Mokelumne Aqueduct No. 1 during fall 2023. General Manager Chan acknowledged the team for their outstanding work on this critical emergency leak repair including District staff Ken Kelly, Power, Treatment and Transmission Maintenance Specialist; Eric West, Maintenance Specialist III; Raffi Moughamian, Associate Civil Engineer; Marshall McLeod, Senior Civil Engineer; Javier Prospero, Senior Civil Engineer; Dan McAuliff, Senior Construction Inspector; Ron Monteforte, Supervising Plant Inspector; Scott Johnson, Plant Inspector; James Burke, Assistant Land Surveyor Supervisor; and Ryan Johnson, Survey Technician II; Ranger Pipelines, Inc. Operations Manager Peter Cuddihy; and UPRR Western States Public Projects Manager Peggy J. Ygbuhay. On behalf of the Board, President Linney expressed appreciation for all the work that went into making the repair and said this repair was extremely important to support the District's drought operations plan to use Freeport facilities and continue ensured water delivery to District customers.

- Motion by Director Patterson, seconded by Director McIntosh to approve the recommended actions for Item 10 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. 35250-21 – Resolution Terminating the Existence Of An East Bay Municipal Utility District Emergency.

11. **General Manager's Report.**

Racial Equity and Justice (REJ) Project and Diversity, Equity, and Inclusion (DEI) Strategic Plan and Semi-Annual Values Update

Diversity and Inclusion Officer Jennella M. Sambour-Wallace and Senior Human Resources Analyst Jaisha A. White provided an update on the REJ Project, DEI Strategic Plan and District Values activities. Ms. Sambour-Wallace reported under REJ Project Strategy 1, the Black Employee Network (BEN) continues holding listening sessions, recently elected a slate of officers and is currently discussing professional development strategies for BEN. Under REJ Project Strategy 2, staff is integrating supplemental focus group data obtained from discussions with staff identifying as LGBTQIA+, Asian and Pacific Islander males, white males, and two or more races as an addendum to The Winters Group Cultural Audit. Under REJ Project Strategy 4, The Winters Group completed its review of the District's civil service rules to identify any issues or barriers that may negatively impact the District's hiring or promotion processes. The review did not identify modifications for the civil service rules but did recommend modifications to some human resource practices. Staff is currently developing an equity tool to identify areas in District policies and procedures that may need to be reviewed and updated. Next, Ms. White reviewed components of the District's DEI Strategic Plan and DEI-related activities at the District including hosting listening sessions; developing an engagement survey on a racism response team and establishing protocols for how to support employees when they may experience racism by customers and the general public; expanding the existing Diversity Committee and Affinity Groups including formation of a new Disability Advocacy and Rights Team to raise awareness in the workplace on societal issues that impact people with disabilities; enhancing the current workforce development and internship programs; exploring an equal employment opportunity aftercare option as a restorative practice for employees; developing a Women in Trades task force; incorporating the gender expression and identity initiative that was developed by the District's Raining Pride Affinity Group; developing a series of DEI trainings for all levels of the organization; DEI benchmarking; and obtaining ongoing

employee feedback. To continue building on the District's core values, staff in the newly established Office of Diversity, Equity and Culture will begin introducing and building awareness of the office and its functions for employee groups. Staff is developing an inclusive language guide and will ensure cultural competency is integrated into the District's emotional intelligence training programs. Upcoming activities include continued implementation of each of the REJ Project strategies; continued work on the five Racial Equity pilot projects; finalizing the DEI Strategic Plan for Board consideration at its Regular meeting on November 9, 2021; continue introducing the Office of Diversity, Equity, and Culture to staff; and continue working on the inclusive language guide. Ms. White acknowledged and thanked the employees that have participated in the District DEI initiatives to date. Ms. Sambour-Wallace and Ms. White responded to Board questions on The Winters Group's recommendation to adjust some of the District's human resources practices instead of adjusting the civil service rules; challenges experienced by staff in implementing DEI efforts; how the Board can support the District's DEI efforts; current and future opportunities to partner and strategize with community colleges on recruitment and diversity hiring efforts; and confirmed the human resources practices that were identified for modification by The Winters Group will likely be incorporated into District policies and procedures. The Board thanked staff for the report and their work.

Coronavirus Update

Director of Operations and Maintenance David A. Briggs presented an update on daily positive COVID-19 cases in Alameda and Contra Costa counties; the number of positive employee and contractor COVID-19 cases at the District to date noting the infection rate among unvaccinated employees is about 2.5 times higher compared to vaccinated employees and that nearly all cases at the District will eventually be "breakthrough" cases because the number of unvaccinated employees will be very small. He highlighted the number of staff currently quarantined; the most recent vaccination rates for the District, Alameda and Contra Costa counties; the public health code and Centers for Disease Control's isolation/quarantine protocol; and the District's COVID-19 related costs from March 2020 to date which totals approximately \$28.8 million. The District implemented its vaccination policy and regular COVID-19 testing continues to be required for all employees reporting to a District worksite who do not have proof of full vaccination on file with the District. Testing continues to be performed on District time and is being paid for by the District. All employees are required to be vaccinated by November 1, 2021; however, exemptions will be granted to employees with legitimate medical and religious reasons. After November 1, the District will continue paying for testing for exempted employees. As of October 1, the District's paid leave policy will only cover vaccinated or exempted employees who must quarantine due to close contact at work, and for employees feeling ill and needing leave after receiving a vaccine. He reviewed implementation priorities for the policy and said staff continues meeting and conferring with the unions and working with existing and new contractors and vendors on including District COVID-19 safety requirements in District contracts. Mr. Briggs responded to Board questions on the number of employees granted leave under the District's paid leave policy, the number of employees using their own time to quarantine/isolate, and booster shots. The Board requested that information regarding booster shot availability be included in updates to staff and to check if industry associations can assist the District with receiving reimbursements from the Federal Emergency Management Agency for COVID-19 related expenses.

2021 Drought Update

Director of Operations and Maintenance David A. Briggs reported on October 4 the District began diverting its 33,250 acre-feet (AF) of Central Valley Project (CVP) allocation through the Freeport Regional Water Authority (FRWA) and still plans to divert 2,000 AF of transferred CVP water from Contra Costa Water District (CCWD) and wheel an additional 3,200 AF of CCWD's CVP allocation to CCWD through FRWA.

Manager of Water Supply Linda H. Hu reviewed the District's long-term water supply strategy and said EBMUD has invested nearly \$900 million over the past 50 years toward the goal of water portfolio diversification. The Freeport Regional Water Project which is a key investment, allows EBMUD to import water from the Sacramento River, especially in drought years. Investments in Freeport as well as water conservation, recycled water and other water portfolio diversification efforts have helped prevent critically low water levels in the District's system, even in droughts like the current one. She reviewed components of the Urban Water Management Plan which was adopted by the Board in June 2021. The plan provides supply-and-demand assessments to a planning horizon of 2050 based on a range of scenarios, describes a diversified and resilient portfolio, outlines the strategies to respond to uncertainties in the future, and includes the District's Water Shortage Contingency Plan (WSCP). The WSCP provides policy guidance to minimize the impacts of a water shortage, especially droughts, on District customers while continuing to meet contractual, environmental and water rights obligations on the Mokelumne River. Some top priorities in the District water supply portfolio include water conservation, leak detection, recycled water, regional partnerships, and groundwater storage and use. Staff will present the Groundwater Sustainability Plan for the East Bay Plain Subbasin for Board consideration in December 2021. To date, EBMUD has invested \$280 million to develop its recycled water program and currently treats up to 9 million gallons per day (MGD) of recycled water to offset irrigation and industrial uses that previously used drinking water. While the District does not currently treat recycled water for drinking, staff continues to monitor potable reuse projects in California for possible use at the District. Large and small projects will be developed, and existing projects will be expanded to meet the goal to treat 20 MGD of recycled water by 2040. Staff continues to evaluate operating a residential fill station program in future drought years including a station in West Oakland. In the meantime, the District offers other programs to help customers save water. Ms. Hu said the District continues to study and evaluate desalination but is currently prioritizing other water supply solutions which have lower costs, lower carbon footprints, and do not produce a waste byproduct. She discussed supplemental supply planning efforts for 2022 noting CVP and State Water Project allocations are projected to be low and that uncertainty and volatility remains in the 2022 water transfers market. Staff continues working with Marin Municipal Water District (MMWD) on their request for the District to potentially wheel up to 8 MGD for MMWD through Freeport under certain conditions in 2022. She reiterated EBMUD cannot commit any capacity in FRWA or in the Mokelumne Aqueducts at this time and that MMWD is evaluating other wheeling options including use of the District's intertie with the City of Hayward and storage in CCWD's Los Vaqueros Reservoir.

Senior Public Information Representative Andrea A. Pook discussed customer outreach efforts. The District is partnering with the state's "Save Our Water Campaign" and continues reporting monthly water savings data to the state. Staff has conducted over 70 interviews with local media and over 55 presentations for the public and continues to conduct water conservation webinars. A press release on the CVP allocation diversion through FRWA was covered by many Bay Area media outlets.

Residents along Moraga Creek (where the diversion water will flow to reach District facilities) and key stakeholders were notified of the plan and staff is scheduled to provide an update to the Moraga Town Council in late October. The next virtual Water Wednesday Speaker Series will be held on October 20 in English and Spanish and include a discussion on water quality. In conclusion, Ms. Pook discussed the growing popularity of the District's Youtube channel and highlighted how staff uses the various social media platforms to highlight timely topics including drought and customer interactions on each.

There was Board discussion regarding the District's messaging on the costs of desalination and recycled water versus water conservation; EBMUD customers' ability to access recycled water from Dublin San Ramon Services District (DSRSD); the use of wind power when studying desalination for the District; and methods for communicating with customers without computers. The Board requested the following for the long-term water supply presentation slides: speaking notes; a slide on challenges with expanding recycled water in West Contra Costa County; a slide on the cost to run the Freeport facilities; a graphic comparing the cost of EBMUD supplies with the cost of recycled water and desalination; and the time of year the photos comparing Pardee Reservoir in 1976 to today were taken. The Board also asked for information on how water efficiency standards may be included in regional water supply reliability collaboration efforts; information on changes to desalination since the last analysis; for staff to contact DSRSD to determine if District customers can access DSRSD's recycled water fill stations; training for the Board on how to access and navigate the District's various social media platforms; and to include pertinent URLs and hashtags in the weekly media updates from staff to the Board.

General Manager's Monthly Report

General Manager Clifford C. Chan said he was available to answer questions regarding the September 2021 Monthly Report.

REPORTS AND DIRECTOR COMMENTS

12. Committee Reports.

- Filed with the Board were the Minutes for the September 28, 2021 Redistricting Ad Hoc Committee and Finance/Administration Committee meetings.
- Upper Mokelumne River Water Authority Board representative John A. Coleman reported the Board met on October 1 and discussed a Forest Projects Report, including a Specific Project Agreement (SPA) with Stanislaus National Forest; an SPA for the Forest Projects Plan with Eldorado National Forest; Legislative Issues Update; and a Forest Program Planning Session.
- Planning Committee Chair Marguerite Young reported the Committee met earlier in the day (remotely) and received updates on the Fontaine Pumping Plant Replacement Project and Availability of the Draft Mitigated Negative Declaration; Interceptor Level Monitoring Station and Overflow Structure Improvements Project; Wet Weather Program Management Update; and Water System Capital Construction Support Agreements for Fiscal Year 2022-2023.

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

None.

14. **Director Comments.**

- Director Coleman reported participating in the UMWRA Board meeting in Valley Springs on October 1 and a Walk and Talk tour with Assemblymember Bauer-Kahan at the Lafayette Reservoir on October 5. He reported on plans to attend/participate remotely in the East Bay Leadership Council Board meeting on October 15; the East Bay Leadership Council Water Task Force meeting on October 18; and a briefing for EBMUD Ward No. 2 on November 2.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 4:03 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: October 26, 2021



Doug A. Linney, President of the Board