

## MINUTES

Tuesday, January 9, 2018

**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 10:39 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, Acting Director of Operations and Maintenance Clifford C. Chan (Item 1), Manager of Regulatory Compliance Michael R. Ambrose (Item 1), Attorney Derek T. McDonald (Item 2), Workers' Compensation Manager and Risk Specialist Vladimir Bessarabov (Item 2), Attorney Lourdes Matthew (Item 3), Director of Finance Sophia D. Skoda (Item 3), Manager of Human Resources Laura A. Brunson (Item 3), and Industrial Employers Distributors Association representative Glenn Berkheimer (Item 3).

### PUBLIC COMMENT

- Addressing the Board were the following: 1) John Briceno, President, AFSCME Local 444, commented on the pace of negotiations, Local 444 equity adjustment requests and the District's employee transit subsidy; 2) Eric Larsen, Member Relations Secretary, AFSCME Local 444, commented on the status of negotiations; 3) Eric West, EBMUD Drafter III, commented on the equity adjustment request for the Drafter III classification; 4) Jae Park, negotiations team member, AFSCME Local 2019, commented on the equity adjustment requests for the Associate Electrical Engineer classification; 5) George Cleveland, 1st Vice-President, AFSCME Local 2019, commented on the District's employee transit subsidy; 6) Jamie MacDonald, 2nd Vice-President, AFSCME Local 2019, commented on the status of negotiations and contract wage ceilings; 7) Mark Foley, President, AFSCME Local 2019, commented on the pace of negotiations, contract wage ceilings and the District's employee transit subsidy; and 8) Heinrich Albert, Sierra Club Bay Chapter, commented on the District's employee transit subsidy.

### BROWN ACT BRIEFING

Attorney Saji T. Pierce presented the annual Brown Act briefing and ethics update. She highlighted Policy 6.04 – Ethics Policy of the EBMUD Board of Directors and the laws covered by this policy. She summarized recent legal developments pertaining to the Brown Act; the California Constitution; the Municipal Utility District (MUD) Act; Title VII and the Fair Employment and Housing Act; the Conflict of Interest, Labor, Penal and Elections Codes; California Government Code Section 1090 pertaining to public officials' approval of contracts; and the Political Reform Act. She reviewed Senate

Bill 45 (Mendoza) which added two new sections (Sections 89002 and 89003) to the California Government Code and codified the Fair Political Practices Commission's regulations for the Mass Mailing Rule. The Board asked questions about the new Mass Mailing Rule requirements and about potential conflicts with Government Code Section 1090 if Board members serve on chambers of commerce or outside agency boards where they may participate in making contracting decisions.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

President McIntosh announced the closed session agenda. The Board discussed agenda Item 1 in the Board Room after which they convened to Conference Room 8 for discussion on agenda Items 2 through 5.

### **Regular Business Meeting**

President McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:28 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.

### **Election of President of the Board**

President McIntosh opened the floor for nominations for President of the Board for 2018.

- Motion by Director Patterson, seconded by Director Linney, to nominate Director Lesa R. McIntosh for President of the Board of Directors for 2018.

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

**Motion No. 001-18** – Elected Director Lesa R. McIntosh as President of the Board of Directors for 2018.

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

President McIntosh opened the floor for nominations for Vice-President of the Board for 2018.

- Motion by Director Coleman, seconded by Director Linney, to nominate Director William B. Patterson for Vice-President of the Board for 2018.

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

**Motion No. 002-18** – Elected Director William B. Patterson as Vice-President of the Board of Directors for 2018.

### **Committee Assignments**

President McIntosh presented a memorandum requesting 2018 Committee assignment preferences. She requested that Board members submit their preferences to Secretary Cole and said that assignments will be presented for Board consideration on January 23.

### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Chris Jerome and Piotr Wilencewicz, New York Life Insurance representatives, commented on their firm's voluntary benefits for District employees (General Manager Coate referred Mr. Jerome and Mr. Wilencewicz to staff); 2) Paul Dorroh commented on an email sent to the Board by Kensington resident Steven Bates regarding a large number of Kensington and Berkeley area customers experiencing higher than usual meter reads and bills and an increase in his billing for higher than usual water use in 2017; 3) Stuart Hellman commented on his experience with an increase in his billing for higher than usual water use in 2017; 4) Josh Baxter commented on his estimated meter reads, higher than usual bills and exaggerated water use in 2017; and 5) Mardi Mertens commented on mistakes on her bill for water use at her residence in 2017.

The Board asked staff to explore if other agencies using similar or the same brand of automated meter were experiencing discrepancies in their meter reads and to explain how long it typically takes the District to process and issue customer refunds. General Manager Coate advised that staff will review the information sent by Mr. Bates, contact the affected customers including today's speakers, check if other agencies are experiencing problems with their automated meter infrastructure and update the Board on these topics as well as on the customer refund process.

## CONSENT CALENDAR

- Item 8 was removed from the Consent Calendar for discussion.
  - Motion by Director Coleman, seconded by Director Young, to approve the recommended actions for Items 1-7 and 9 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. 003-18** – Approved the Regular Meeting Minutes of December 12, 2017 and the Special Meeting Minutes of December 29, 2017.
  2. The following correspondence was filed with the Board: 1) EBMUD Annual Brown Act and Ethics Update materials from Closed Session, dated January 9, 2018; 2) Closed Session Presentation entitled, “EBMUD Annual Brown Act and Ethics Update,” dated January 9, 2018; 3) Map displaying agency locations, salaries and whether they were used in the classification study and GIS Specialist-Salary Comparison Exhibit-12/20/17 submitted by Eric West; 4) Transit subsidy chart comparing BART costs versus EBMUD employee transit subsidy amounts and AFSCME Locals 2019 and 444 proposed annual subsidy increases, submitted by George Cleveland, 1<sup>st</sup> Vice-President, AFSCME Local 2019; 5) New York Life Insurance materials provided by representatives Chris Jerome and Piotr Wilencewicz; 6) Memorandum dated January 9, 2018, to Board of Directors from Lesa R. McIntosh, President, regarding 2018 Board Committee Assignment Preferences; 7) Presentation entitled, “Water Supply Board Briefing,” dated January 9, 2018; 8) Presentation entitled, “Board of Directors East Bay Municipal Utility District Washington Update ENS Resources, Inc.,” dated January 9, 2018; and 9) Speakers’ Bureau and Outreach Record CY17, dated January 9, 2018.
  3. **Motion No. 004-18** – Awarded a contract to the lowest responsive/responsible bidder, Kiewit Infrastructure West Co., in the amount of \$890,000 for construction of San Pablo Tunnel East Access Shaft Improvements under Specification 2118.
  4. **Motion No. 005-18** – Awarded a contract to the lowest responsive/responsible bidder, San Francisco Elevator Services, Inc., in the amount of \$2,470,000 for construction of Administration Building Elevators Upgrade Phases 1 and 2 under Specification 2122A.
  5. **Motion No. 006-18** – Authorized an agreement beginning on or after January 9, 2018 with Hazen and Sawyer, DPC, in an amount not to exceed \$1,050,473 to prepare the 2050 Demand Study.
  6. **Motion No. 007-18** – Authorized an agreement beginning on or after January 9, 2018 with Innovyze, Inc., in an amount not to exceed \$144,000 for six SCADAWatch™ Suite Software licenses, software installation, configuration, implementation, on-site training, and software maintenance and support for the Enterprise Hydraulic Modeling Project.
  7. **Motion No. 008-18** – Authorized an amendment to Board Motion No. 015-14 to include Comcast Business Communications, LLC, as an additional provider of data services under the State of California CALNET-3 agreement and increase the annual cost by \$70,000. The additional \$70,000 will increase the annual estimated cost for data and voice services to \$1,470,000.

8. **Motion No. 009-18** – Approved a seventh and final 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, which allows Viridis to defer the accumulated monthly “Additional Value” payment of \$260,000 until June 1, 2018.
  - Director Mellon removed Item 8 from the Consent Calendar to announce that he would be voting “No” on the staff recommendation.
  - Motion by Director Linney, seconded by Director Coleman, to approve the recommended action for Item 8, carried (6-1) by the following voice vote: AYES (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (Mellon); ABSTAIN (None); ABSENT (None).
9. **Resolution No. 37017-18** – Authorizing A 20-Year Lease Agreement With The City Of San Leandro For Chabot Park.

#### **DETERMINATION AND DISCUSSION**

10. **Review the May 26, 2015 Board adopted policy position opposing the imposition of any statewide retail water user fees.**

President McIntosh announced that Item 10 was removed from the agenda.

11. **Legislative Update.**

EBMUD Washington, D.C. Lobbyist Eric Sapirstein presented an update on federal legislative activities of interest to the District. He reviewed factors that could impact the 2018 legislative session including changes in the Senate and the House of Representatives, the #MeToo movement, and the debate on budgets for fiscal years 2018 and 2019. He highlighted recent and upcoming key federal milestones, and recent appointees to the U.S. Department of the Interior, the Environmental Protection Agency and White House staff. In conclusion, Mr. Sapirstein discussed congressional and administration policy priorities and the District’s core priorities for 2018 in the areas of water and the environment and infrastructure policy. The Board thanked Mr. Sapirstein for the update and asked questions about how key committee staff changes could impact District interests, federal funding for District projects, and the status of federal disaster relief funding.

Next, Manager of Legislative Affairs Marlaigne K. Dumaine reviewed the proposed federal legislative initiatives for 2018. Legislative/Human Resources Committee Chair John A. Coleman reported that the Committee during its meeting earlier in the day voted to support the proposed federal legislative initiatives for 2018. In regards to Initiative 1, the Board asked staff to consider if Congressman McClintock could be of assistance on EBMUD/Upper Mokelumne River Watershed Authority matters. Committee member Marguerite Young reported that in reference to Item 10 which was removed from the Board agenda, the Committee agreed to have staff revise the policy based on the Committee’s discussion during its meeting and present the amendments at a future Committee meeting for review and consideration.

- Motion by Director Coleman, seconded by Director Patterson, to approve the proposed federal legislative initiatives for 2018, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Mellon). Director Mellon left the meeting at 2:30 p.m.

**Motion No. 010-18** – Approved the proposed federal legislative initiatives for 2018 which focus on: 1) advancing EBMUD’s interests in the context of protecting EBMUD’s Mokelumne water rights, EBMUD’s water supply reliability, and the Mokelumne fishery; 2) seeking federal funding opportunities for EBMUD projects via any new and existing federal programs; 3) advancing EBMUD’s interests in the context of federal participation in California WaterFix; and 4) continuing to monitor and evaluate federal efforts to promote healthy forests and watersheds, and provide updates to the Board as appropriate.

<b>FEDERAL INITIATIVE</b>	<b>ACTION</b>
<p>1. Continue to advance EBMUD’s interests in the context of Mokelumne River water rights, water supply reliability, and the Mokelumne fishery.</p>	<p>Staff will focus on EBMUD’s priority issues in an effort to ensure EBMUD’s ratepayers are not held responsible for the flow obligations, project mitigations, or expected habitat restoration success of others, including the state and federal projects. This includes efforts to:</p> <ul style="list-style-type: none"> <li>Protect EBMUD’s Mokelumne water rights, and preserve EBMUD’s access to water transfers and its Central Valley Project (CVP) contract supplies.</li> <li>Protect regional water supply programs and projects, including Freeport Regional Water Project.</li> <li>Protect the Mokelumne fishery, including working to ensure that any policy or program revision, or project or project-related activity that would impact the Mokelumne salmonid fishery includes mitigation by the responsible parties for the impacts.</li> <li>Support appropriate stewardship responsibilities for the CVP, and the preservation of the ESA and the CVPIA.</li> </ul>
<p>2. Seek federal funding opportunities for EBMUD projects via any new and existing federal programs.</p>	<ul style="list-style-type: none"> <li>• Seek any available funding opportunities via current federal avenues which include the WIIN Act, the USBR WaterSmart program, and the USBR Title XVI program. Examples of types of projects that may be eligible for funding include water conservation and water-use efficiency projects, as well as recycled water projects.</li> <li>• Continue to advance EBMUD’s comprehensive infrastructure funding needs as congress works to develop infrastructure policy. These needs include but are not limited to: the Capital Improvement Program; the Regional EBMUD Seismic Component Upgrade program; the Bay Area Regional Reliability Project; recycled water projects; projects to facilitate regional and/or local water supply reliability; projects or programs to facilitate climate change mitigation and resiliency, including water and energy conservation; and projects to facilitate renewable energy.</li> <li>• Seek project assistance opportunities within the context of any discussions that may occur regarding temporary federal relief packages such as drought or emergency relief.</li> </ul>

<p>3. Advance EBMUD’s interests in the context of federal participation in California WaterFix.</p>	<ul style="list-style-type: none"> <li>• Staff will focus on EBMUD’s priority issues:           <ul style="list-style-type: none"> <li>○ EBMUD ratepayers should not be asked to pay for costs for a project that does not benefit them and are the responsibility of others.</li> <li>○ Support the United States Bureau of Reclamation “participation approach” to California WaterFix that is intended to recover costs from participating Central Valley Project contractors and avoid negative impacts to non-participating Central Valley Project contractors.</li> </ul> </li> </ul>
<p>4. Continue to monitor and evaluate federal efforts to promote healthy forests and watersheds, and provide updates to the Board as appropriate.</p>	<ul style="list-style-type: none"> <li>• Monitor federal legislation on forest and watershed health, and identify potential opportunities for EBMUD to engage, particularly through its role in the Upper Mokelumne River Watershed Authority.</li> <li>• Continue to gather information at the federal level on efforts to fund both forest management and wildfire suppression, as well as efforts to promote forest and watershed health, and provide updates to the Board as appropriate.</li> </ul>

**12. General Manager’s Report.**

Manager of Maintenance and Construction David A. Briggs presented the Water Supply Briefing in which he reviewed Water Year 2017 and the status of the District’s current water supply. For Water Year 2017, end of year total system storage was 630 thousand acre-feet (TAF) and total runoff was 1,925 TAF. Next, he highlighted precipitation, snow levels and East Bay and Mokelumne reservoirs storage as of January 7 and water supply projections for the remainder of Water Year 2018.

**Appoint Ad Hoc Committee to negotiate amendments to employment agreements with General Manager and General Counsel based on 2017 performance evaluations.**

- Motion by Director Coleman, seconded by Director Katz, to approve the Ad Hoc Committee appointments, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Mellon).

**Motion No. 011-18** – Appointed President Lesa R. McIntosh and Directors Frank Mellon and William B. Patterson to the Ad Hoc Committee to negotiate amendments to employment agreements with the General Manager and the General Counsel based on 2017 performance evaluations.

General Manager Coate noted that the 2017 Interdepartmental Committees Annual Reports and the December 2017 Monthly Report was provided in the Board’s packet. He also asked the Board to review the Speakers’ Bureau and Outreach Record at their places and provide updates to staff. The Board asked about event scheduling for the District’s Water on Wheels truck and requested information on the use of District vehicles and personnel for Board members’ participation in District sponsored parades and other community events.

**REPORTS AND DIRECTOR COMMENTS**

**13. Committee Reports.**

- Filed with the Board were the Planning and Legislative/Human Resources Committee Minutes of December 12, 2017.

**14. Other Items for Future Consideration.**

None.

**15. Director Comments.**

- Director Coleman reported attending/participating in the following events: Retirement event for Gayle Vassar (Walnut Creek Manager of Communications) on December 14 in Walnut Creek; EBMUD teleconference on December 14 in Oakland; ACWA Executive Committee teleconference on December 18 in Oakland; ACWA Executive Director's 2017 performance evaluation on December 19 in Sacramento; EBMUD holiday event on December 21 in Oakland; and meeting with AFSCME Local 444 representatives on January 3 in Oakland. He reported on plans to attend/participate in the Freeport Regional Water Authority meeting on January 11 in Oakland and the East Bay Leadership Council dinner on January 18 in Concord.
- Director Katz had no comment.
- Director Linney had no comment.
- Director Mellon had no comment.
- Director Patterson reported attending an event honoring Dr. Faustin Jones-Wilson on December 1 at Howard University in Washington, D.C.; Oakland Unified School District meeting on December 21; and Special EBMUD Board of Directors meeting on December 29 in Oakland. Director Patterson also announced the recent passing of Bishop O'Dowd High School President Stephen Phelps.
- Director Young had no comment.
- President McIntosh had no comment.



**ADJOURNMENT**

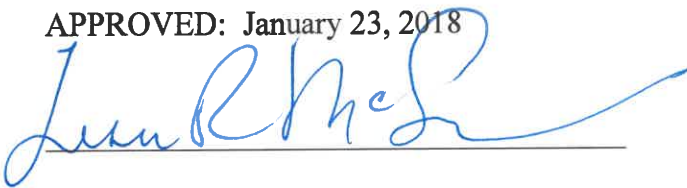
President McIntosh adjourned the meeting at 2:52 p.m. in memory of Henry "Hank" Willy Jr., a founding member of the Upper Mokelumne River Watershed Authority and a member of the Jackson Valley Irrigation District Board of Directors.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: January 23, 2018



Lesla R. McIntosh, President of the Board

