

MINUTES

Tuesday, October 26, 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 11:08 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 1-4), 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 (Items 2 and 3), Director of Engineering and Construction Olujimi O. Yoloye (Item 3), Assistant General Counsel Fred S. Etheridge (Item 4), Director of Water and Natural Resources Michael T. Tognolini (Item 4), Engineering Manager Lena L. Tam (Item 4), Environmental Affairs Officer Jose D. Setka (Item 4), Manager of Fisheries and Wildlife Michelle L. Workman (Item 4), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 1).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Cheryl Ledoux, Senior New Business Representative asked the Board to consider an equity adjustment for the Senior New Business Representative and New Business Representative classifications and to review the previously provided presentation and research materials; 2) Eric O. Larsen, President, AFSCME Local 444 commented on inflationary pressures impacting union members, staff's response to multiple main breaks during the October 23-24 storms, and asked the Board to approve a meaningful wage package for staff; 3) Nick Lawrence commented on continuing unsafe conditions on Tappan Terrace in Orinda; 4) George Cleveland, Chief Steward, AFSCME Local 2019, commented on a District investigation and asked the Board to direct staff to remove a Local 2019 member who may not need to be involved in the process and to offer the member an apology for being included. He also commented on a member feeling harassed by supervisors for their opinion regarding the District's vaccine mandate; and 5) Ivette Rivera, EBMUD employee read excerpts from the Ayriel Bland government tort claim.

President Linney offered thanks to the staff that responded to the multiple main breaks during the October 23-24 storms.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

At 1:05 p.m. General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 1:30 p.m. At 1:25 p.m. General Manager Chan informed the Secretary the Regular Business Meeting would start at 1:45 p.m. At 1:40 p.m. General Manager Chan informed the Secretary the Regular Business Meeting would start at 1:55 p.m. President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:58 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

- Addressing the Board were the following: 1) Ivette Rivera, EBMUD employee read from the government tort claims of Ayriel Bland and Saji Pierce; and 2) Diane Reilly, EBMUD customer commented on overgrown trees near the Hiller Highland water tank and asked the District to trim the trees.

General Manager Clifford C. Chan advised Ms. Reilly staff would contact her regarding the trees and requested she email her contact information to the Secretary of the District.

CONSENT CALENDAR

- Motion by Director McIntosh, seconded by Director Patterson to approve the recommended actions for Items 1-9 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. 179-21** – Approved the Regular Meeting Minutes of October 12, 2021.

2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Coronavirus Update,” dated October 26, 2021; and **2)** Presentation entitled, “Drought Update,” dated October 26, 2021.
3. **Motion No. 180-21** – Awarded a contract to the lowest responsive/responsible bidder, Core & Main, LP, dba R&B Company, for supplying restrained (RCT Flex Tite) fittings and polyvinyl chloride pipe restraints for two years, beginning on or after November 1, 2021 with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$3,093,880 under Request for Quotation No. 2112.
4. **Motion No. 181-21** – Authorized an agreement beginning on or after October 26, 2021 with The Regents of the University of California in an amount not to exceed \$1,500,000 for creating a Center for Smart Infrastructure on the University of California, Berkeley campus.
5. **Motion No. 182-21** – Authorized agreements with CPM Associates, Inc., Kennedy/Jenks Consultants, Inc., and MCK Americas, Inc., for as-needed construction management and inspection services beginning on or after October 26, 2021 for three years in an aggregate amount not to exceed \$15,000,000.
- 6a-b. **Motion No. 183-21** – Authorized agreements with the following service providers for hydro/air-vacuum excavation services beginning on or after October 26, 2021 for one year in an aggregate amount not to exceed \$500,000: AIMS/PVIC CA, LLC dba AIMS Companies; Badger Daylighting Corp.; Bradley Tanks, Inc.; Hydro-X Services, Inc.; Pipe and Plant Solutions, Inc.; and Presidio Systems, Inc.; and authorized additional agreements for hydro/air-vacuum excavation services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.
- 7.1. **Motion No. 184-21** – Ratified the extension of agreements and aggregate payment of \$446,234 to Traffic Control Pros, TPR Traffic Solutions, and Bay Area Traffic Solutions, Inc. for flagging services through October 26, 2021.
- 7.2a-b. **Motion No. 185-21** – Authorized agreements with the following service providers for flagging services beginning on or after October 26, 2021 for one year in an aggregate amount not to exceed \$1,900,000: Bay Area Traffic Solutions, Inc.; Cal-Safety, Inc.; CMC Traffic Control Specialists, Inc.; TPR Traffic Solutions; Traffic Control Pros; Traffic Management, Inc.; and Yolanda’s Construction Administration & Traffic Control, Inc.; and authorized additional agreements for flagging services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.

8. **Motion No. 186-21** – Authorized the Office of General Counsel to continue the employment of the law firm of Apex Employment Law, LLP, for specialized legal services related to public sector labor and employment law and litigation matters in an additional amount not to exceed \$150,000.
9. **Motion No. 187-21** – Approved the September 2021 Monthly Investment Transactions Report.

DETERMINATION AND DISCUSSION

10. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine discussed the mid-session report on state legislation and the status of each bill on which the District adopted a formal position during the 2021 legislative year. She reported language regarding SupplyBank.Org's inquiry seeking statutory clarification regarding the transportation analysis for the Oakport Street Project located on the District's Oakport Street Property was not included in a budget trailer bill as requested. Approximately 2,700 legislative measures (2,400 bills and 300 resolutions) were introduced throughout 2021. Governor Newsom considered over 800 bills, signed 770 and vetoed 66. Ms. Dumaine discussed the state budget including the unexpected \$75 billion dollar surplus, the influx of federal government funds, and the status of three COVID-19 funding measures. She responded to questions on how the state uses budget surplus and rainy day funds. She confirmed the state does not have to spend all budget surplus funds in the year they are collected and can deposit a portion or all of the funds into a rainy-day fund. She noted some items related to wildfires, climate change and water policy that were originally slated to be financed through bond measures were instead financed through the budget process using surplus funds. Director Coleman asked staff to provide the following bills to the Upper Mokelumne River Watershed Authority Executive Director: AB 315, AB 697, AB 1066, AB 1570, and SB 63.

11. **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.**

General Counsel Derek T. McDonald highlighted the recommended action which if approved, would allow the Board to continue holding its meetings via teleconference during the COVID-19 pandemic state of emergency.

- Motion by Director Coleman, seconded by Director Mellon to approve the recommended actions for Item 11 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. 35251-21 – Authorizing Continued Utilization of Teleconferencing for Meetings of the East Bay Municipal Utility District Board of Directors (*Under Assembly Bill 361*).

12. **General Manager's Report.**

Coronavirus Update

Director of Operations and Maintenance David A. Briggs presented an update on the most recent vaccination rates for the District, Alameda and Contra Costa counties; the number of positive employee and contractor COVID-19 cases at the District to date; and the number of staff currently quarantined. Staff continues implementing the District's vaccination policy and providing weekly COVID-19 testing 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. Staff continues meeting and conferring with the unions over impacts from the vaccination policy and is working with industry associations to recover COVID-19 related expenses. Manager of Legislative Affairs Marlaigne K. Dumaine responded to a question on whether the Association of California Water Agencies (ACWA) is working with the District on efforts to recover COVID-19 related expenses and said staff will raise this topic at the October 29, 2021 ACWA Planning meeting.

- Addressing the Board was Joey D. Smith, President, AFSCME Local 2019 who commented on how the District's vaccination policy is negatively impacting employees and the workplace and asked the Board to consider Local 2019's proposal on this topic which was submitted to staff.

2021 Drought Update

Director of Operations and Maintenance David A. Briggs reported the District began diverting its Central Valley Project (CVP) allocation through the Freeport Regional Water Authority (FRWA) on October 4. To date, the District has diverted approximately 5,000 of its 33,250 acre-feet (AF) CVP allocation, completed diverting 2,000 AF of CVP transfer water from Contra Costa Water District (CCWD) to EBMUD, and is scheduled to wheel 3,200 AF of CCWD's CVP allocation to CCWD through FRWA in October according to a previous agreement. He reported on the levels of rain and precipitation received in the East Bay and the Mokelumne watershed from the October 23-24 storms as well as impacts to the water and wastewater systems and FRWA operations.

In response to a question from the Board regarding impacts to the District's wastewater system operations from the October 23-24 storms, Director of Wastewater Eileen M. White provided an overview of how staff operated the wastewater treatment facilities including the three Wet Weather Facilities (WWF), and which facilities were affected by increased flows, power outages, flooding, and equipment and instrumentation failures. Ms. White reported on the District's responses to a potential sanitary sewer overflow near Central Avenue in El Cerrito and a depleted supply of sodium bisulfite solution (used to dechlorinate effluent prior to discharge) at the Pt. Isabel WWF. She said staff stepped up to the challenges and expressed appreciation for their work during the storm events. General Manager Chan reported that on October 22, right before the storm events, a contractor drilled into the District's 48-inch Sequoia Aqueduct on Broadway Avenue near College Avenue in Oakland which caused water outages and pressure issues for some customers in the area.

Engineering Manager Lena L. Tam provided an update on state activities. On October 15, the District's water rights at Pardee Reservoir were no longer restricted by the State Water Resources Control Board under their curtailment order and on October 19, the state lifted curtailment of all other District water rights. Also on October 19, Governor Newsom expanded the summer emergency declaration due to drought conditions to the entire state which requires agencies like the District to execute their urban Water Shortage Contingency Plans. She said the District had already implemented its plan when the Board declared a Stage 1 drought on April 27.

Director of Water and Natural Resources Michael T. Tognolini provided an update on District actions taken to date to determine if the District can provide drought assistance to Marin Municipal Water District (MMWD). EBMUD and MMWD recently executed a Memorandum of Understanding (MOU) to explore the possibility of EBMUD wheeling up to 8 MGD for MMWD through Freepoint under certain conditions in 2022. He reviewed a few key principles in the MOU which state in part that wheeling water to MMWD will not impact EBMUD customers nor EBMUD's ability to obtain its own transfer water; Freepoint is not available for wheeling to MMWD at this time and that EBMUD staff recommended MMWD consider using EBMUD's Hayward Intertie; and the water source for MMWD will not come from EBMUD nor will EBMUD sell any of its water to MMWD. He reported MMWD has evaluated multiple options to meet its water supply needs in 2022 and determined the most viable alternative is a connection to the EBMUD system in Richmond with EBMUD wheeling water to MMWD. At its October 19 meeting, the MMWD Board approved a notice of exemption for the project, pre-purchase of pipe for a bridge crossing, and a storage and transfer agreement with CCWD that would allow MMWD to store transfer water in Los Vaqueros Reservoir and potentially purchase up to 5,000 AF of water directly from CCWD. The City of Richmond (City) and the Richmond community have raised concerns regarding the connection location and community impacts. The District is working with the City and MMWD to ensure the roles and responsibilities of this project are clear to residents and to address residents' concerns. There was considerable Board discussion and comments regarding potential impacts to Richmond residents including changes in the taste and water quality; concerns EBMUD staff is moving forward with a project without proper Board input; whether EBMUD staff has made a definitive determination to proceed with a project; community engagement and adequate outreach to Richmond residents; how the Hayward Intertie would be used to convey water to MMWD; the potential to tie Marin County into the Bay Area water system; meetings held to date with MMWD; and including Director McIntosh (representative of the portion of Richmond in which the project would be located) in future meetings.

- Addressing the Board was Joey D. Smith, Richmond resident who expressed concerns regarding the project, the proposed pumping plant, and comments at the October 20, 2021 Contra Costa Transportation Authority meeting regarding EBMUD's participation in the project.

Senior Public Information Representative Andrea A. Pook reported on outreach efforts. Staff has conducted over 66 presentations for the public and continues to conduct water conservation outreach through webinars and upcoming series in English and Spanish on Fall garden maintenance, tree health and home water leaks. To date the District has issued information to the press regarding the water diversions through FRWA; the connection of a golf course in San Ramon to recycled water supplies; the Water Wednesday Speaker Series; and participating in a joint press release with CCWD regarding the Los Vaqueros Reservoir expansion project. She highlighted media coverage and recent social media activities.

The Board requested a written summary of wet weather operations during the October 23-24 storms and an update on the MMWD project and principles.

REPORTS AND DIRECTOR COMMENTS

13. Committee Reports.

- Filed with the Board were the Minutes for the October 12, 2021 Planning Committee Meeting.
- President Linney reported the Redistricting Ad Hoc Committee met earlier in the day (remotely) and received an update on questions raised during the September 28, 2021 Committee meeting and a presentation on three redistricting proposals to adjust the boundaries between Wards 5 and 7 to bring both ward populations within three percent of the target ward population of 211,060. President Linney said the Committee voted to submit Proposal 1 to the Board for review and consideration to present at public hearings in 2022.
- Sustainability/Energy Committee Chair Marguerite Young reported the Committee met earlier in the day (remotely) and received updates on the Resource Recovery Program; Renewable Energy; and the District's 2020 Greenhouse Gas Inventory.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day (remotely) and received updates on the Financial Review of Fiscal Year 2021; Fiscal Year 2021 Key Performance Indicators Report; Monthly Investment Transactions Report for September 2021; the Quarterly Financial Reports; and Fiscal Year 2021 Annual Power Sales Report. Director Patterson commended the Finance staff for their work.

General Counsel Derek T. McDonald announced that although Director Andy Katz was able to hear all items presented during the Finance/Administration Committee meeting, he was unable to participate in the roll call vote to accept the reports due to technical difficulties. Mr. McDonald said Director Katz affirmed he voted to accept the following items: Fiscal Year 2021 Key Performance Indicators Report; Monthly Investment Transactions Report for September 2021; the Quarterly Financial Reports; and Fiscal Year 2021 Annual Power Sales Report.

14. Other Items for Future Consideration.

None.

15. Director Comments.

- Director Coleman reported participating remotely in the East Bay Leadership Council Board meeting on October 15 and the East Bay Leadership Council Water Task Force meeting on October 18.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 3:54 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: November 9, 2021



Doug A. Linney, President of the Board