

MINUTES

Tuesday, July 25, 2017

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

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:00 a.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Xanthe M. Berry (Item 1), Engineering Manager Serge V. Terentieff (Item 1), Manager of Customer and Community Services Sherri A. Hong (Item 2), Manager of Real Estate Services Matt Elawady (Item 2), Manager of Human Resources Laura A. Brunson (Item 3), Manager of Employee Relations David Pak (Item 3), and Industrial Employers Distributors Association representatives Glenn Berkheimer and Bruce Heid (Item 3).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Center Board Room.

ROLL CALL

Directors Andy Katz, Doug Linney, Frank Mellon, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh were present at roll call. Director John A. Coleman was absent (excused). Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President McIntosh led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Dennis Martel, Moraga resident commented on the landslide on Augusta Drive and EBMUD's actions to date to address the landslide; and 2) Steve Garrett, Orinda resident commented on the landslide in Moraga and asked if landslide updates could be a standing agenda item until the issue is resolved.

CONSENT CALENDAR

- Items 4 and 14 were pulled from the Consent Calendar for comment.
 - Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Items 1-3 and 5-13 on the Consent Calendar, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).
1. **Motion No. 122-17** – Approved the Regular Meeting Minutes of July 11, 2017.
 2. The following correspondence was filed with the Board: **1)** Formal bid protest for Leland and Almond Reservoir Roof Improvements project from JD Engquist of Andy's Roofing Co., Inc.; **2)** List of delinquent EBMUD Charges for Transfer to Alameda County 2017-2018 and Contra Costa County 2017-2018 Property Tax Rolls; **3)** Speakers' Bureau and Outreach Record CY17 as of July 24, 2017; **4)** Affidavit of Posting dated June 30, 2017 and Notice of Time and Place of Public Hearing on the collection by East Bay Municipal Utility District of unpaid delinquent charges through property tax bills for multi-family accounts and filing of report; **5)** Contra Costa Times Proof of Publication of the Notice of Public Hearing on the collection by East Bay Municipal Utility District of unpaid delinquent charges through property tax bills for multi-family accounts and filing of report (Legal No. 5982555 published June 30 and July 7, 2017); **6)** Oakland Tribune Proof of Publication of the Notice of Public Hearing on the collection by East Bay Municipal Utility District of unpaid delinquent charges through property tax bills for multi-family accounts and filing of report (Legal No. 5982555 published June 30 and July 7, 2017); and **7)** Presentation entitled "North Richmond Recycled Water Contract Negotiations Update," dated July 25, 2017.
 3. **Motion No. 123-17** – Awarded contracts to the lowest responsive/responsible bidders, Univar USA, Inc., and Olin Corporation, in the total annual amount, after the addition of taxes, not to exceed \$3,755,052 for supplying liquid sodium hypochlorite to various District sites for three years, beginning on or after August 1, 2017 with two options to renew for an additional one-year period for a total cost of \$18,775,259 under Request for Quotation No. 1718.

4. **Motion No. 132-17** – Awarded a contract to the lowest responsive/responsible bidder, Commercial Waterproofing Systems, Inc., dba ERC Roofing and Waterproofing, in the amount of \$1,797,395 for construction of Leland and Almond Reservoir Roof Improvements under Specification 2127.
 - Addressing the Board was JD Engquist from Andy's Roofing Co., Inc. who was protesting the contract award. He stated the three lowest bids should be considered non-responsive because they did not list a state-certified lead abatement contractor to perform lead related work. The Board asked questions about the certification requirements listed in the bid documents and Mr. Engquist's comments. Staff clarified that the state regulations Mr. Engquist referenced in his protest did not apply to the type of work being performed.
 - Motion by Director Mellon, seconded by Director Patterson, to approve the recommended action for Item 4, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).
5. **Motion No. 124-17** – Awarded a contract to Integrated Archive Systems, Inc., in an amount, after the addition of taxes, not to exceed \$824,520 for supplying NetApp, Inc., data storage equipment, installation, and staff training for District data centers located at the Administration Building in Oakland and the Disaster Recovery/Business Continuity site in Sacramento with three years of maintenance and support, beginning on or after August 1, 2017.
- 6a-b. **Motion No. 125-17** – Authorized an amendment to Board Motion No. 071-15 dated April 28, 2015, to increase the estimated agreement amounts by \$570,000 for the rental of fully maintained and operated (FM&O) portable welding services from Eyeball Engineering, Ferguson Welding Services, T.A.Z. Welding & Fabrication; Larsson Welding; Mid Mountain Mechanical, Nicole Welding, and Wood Welding beginning on or after July 25, 2017 through the remainder of the agreement period ending April 30, 2020; and authorized additional agreements for FM&O portable welding rental services with vendors that meet District standards and offer pricing at or below the range in the amended agreements above. These additional agreements may be issued, on an as-needed basis to increase flexibility and ensure availability of FM&O portable welding rental services to the District.
7. **Motion No. 126-17** – Authorized an agreement with Collection Bureau of America to provide collection services on unpaid terminated District customer accounts for a fee of 18 percent on the collected amount on accounts referred from September 1, 2017 through August 31, 2020, with two options to renew for an additional one-year period.
8. **Motion No. 127-17** – Authorized the extension of an agreement with Bentley Systems, Inc., in an amount, after the addition of taxes, not to exceed \$496,500 for supplying Microstation software licenses and maintenance for three years beginning on or after August 1, 2017.
9. **Motion No. 128-17** – Authorized a third amendment to the agreement with SR Bray, LLC, dba Power Plus approved under Board Motion No. 018-16 dated January 26, 2016, to increase the authorization by \$260,000, to an amount not to exceed \$616,370, to continue the rental of a standby generator at Lafayette Water Treatment Plant beginning on or after July 25, 2017.

10. **Motion No. 129-17** – Authorized staff to execute a Memorandum of Understanding with the City of Hayward to jointly prepare a Groundwater Sustainability Plan for the East Bay Plain Sub-basin, a grant application, and a cooperating agreement.
11. **Motion No. 130-17** – Cancelled the August 22, 2017 Closed Session and Regular Meetings of the Board of Directors.
12. **Motion No. 131-17** – Approved the June 2017 Monthly Investment Transactions Report.
- 13a-b. **Resolution No. 35049-17** – Authorizing The Sale Of The Stonewall Reservoir Property In Oakland, California, To JB Stonewall, LLC.
14. **Resolution No. 35050-17** – Appointing David A. Briggs As Manager Of Maintenance And Construction/Water Operations (*effective August 21, 2017*).
 - Director Mellon congratulated Mr. Briggs on his appointment and welcomed him to the District. Mr. Briggs thanked the Board for the opportunity and said he looks forward to serving his community.
 - Motion by Director Mellon, seconded by Director Young, to approve the recommended action for Item 14, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

PUBLIC HEARING

15. **Conduct a public hearing to consider objections and protests to the General Manager's Report to Transfer Delinquent EBMUD Charges to the 2017-2018 Property Tax Rolls.**

President McIntosh opened the public hearing at 1:33 p.m. She announced that the hearing is to consider objections and protests to the General Manager's Report to Transfer Delinquent EBMUD Charges to the 2017-2018 Property Tax Rolls. She noted that staff is available to meet with customers who are protesting and want to make a payment arrangement. President McIntosh asked for speakers to come forward. There was no public comment. President McIntosh closed the hearing at 1:34 p.m.

DETERMINATION AND DISCUSSION

16. **Adopt the General Manager's Report and authorize the General Manager to exclude from the report any affected parcels or amounts as appropriate, including those that the District receives payment for on or before the reports are sent to Alameda and Contra Costa counties in electronic form by August 10, 2017.**
 - Motion by Director Patterson, seconded by Director Young, to approve the recommended action for Item 16, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Resolution No. 35051-17 – Approving The Transfer Of Unpaid Delinquent Charges to Alameda And Contra Costa Counties' 2017-2018 Property Tax Rolls.

17. Amend Exhibit A – Summary of Changes – of Board Position Resolution No. 35048-17 approved on July 11, 2017 for Fiscal Year 2018/2019 to correct a typographical error on the numbers of full-time and temporary construction and limited-term positions allocated.

- Motion by Director Linney, seconded by Director Patterson to approve the recommended action for Item 17, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Resolution No. 35052-17 – Amend Resolution No. 35048-17 Authorizing The Number And Character Of Positions And Authorizing The General Manager To Take Action In Connection Therewith.

18. Consider a request from Viridis Fuels, LLC (Viridis) to extend the current deferred Additional Value payment of \$175,244.36 due under the lease agreement between Viridis and the District for a portion of the District's West End property until December 1, 2017, for a total deferment of Additional Value payments of \$260,000.04.

- Addressing the Board was: 1) Kathy Neal, Viridis Fuels CEO who provided background information on Viridis' need for an extension on the current deferred Additional Value payment and 2) Elihu Harris, Viridis Fuels Board member who urged the Board to approve Viridis' request for an extension and stated that Viridis is on track and committed to completing the project.

There was extensive Board discussion regarding the time needed for Viridis to prepare information for the District to complete outstanding California Environmental Quality Act (CEQA) documentation, how the leased property is currently being used, Viridis' ability to make a good faith payment towards the Additional Value balance, and clarification about Viridis' non-refundable deposit being retained by the District.

Director Linney offered an amendment to the original motion to include a requirement that Viridis provide the District with monthly, written progress reports and that the Board is notified when Viridis submits the required CEQA documentation to staff. Director Patterson supported the recommended amendment.

- Motion by Director Linney, seconded by Director Patterson, to amend the original motion to include a requirement that Viridis provide the District with monthly, written progress reports and that the Board be notified when Viridis submits the required CEQA documentation to staff.

Director Mellon offered an additional amendment to Director Linney's motion to include a requirement for Viridis to make a \$50,000 good faith payment towards the Additional Value payment balance. Director Linney supported the additional amendment. After further discussion regarding Viridis' ability to make a good faith payment, Director Mellon withdrew his amendment.

- Motion by Director Linney, seconded by Director Patterson, to approve the action for Item 18, with the recommended amendment carried (4-2) by the following voice vote: AYES (Katz, Linney, Patterson and McIntosh); NOES (Mellon and Young); ABSTAIN (None); ABSENT (Coleman).

Motion No. 133-17 – Considered a request from Viridis Fuels, LLC (Viridis) to extend the current deferred Additional Value payment of \$175,244.36 due under the lease agreement between Viridis and the District for a portion of the District's West End property until December 1, 2017, for a total deferment of Additional Value payments of \$260,000.04 and included a requirement that Viridis provide the District with monthly, written progress reports and notification when Viridis submits required California Environmental Quality Act documentation to District staff.

19. **Legislative Update.**

Legislative/Human Resources Committee member William B. Patterson reported that the Committee met earlier and unanimously voted to support the recommended position for H.R. 23 (Valadao) but did not come to consensus on a recommendation for SB 623 (Monning).

- Motion by Director Patterson, seconded by Director Young, to approve the recommended position on H.R. 23 (Valadao), carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Manager of Legislative Affairs Marlaigne K. Dumaine provided an overview of SB 623 which seeks to establish the Safe and Affordable Drinking Water Fund to provide grants and loans to assist communities and individual domestic well owners that rely on contaminated drinking water. The author intends to amend SB 623 to include a “ratepayer assessment” on retail water customers as a significant funding source for the fund. This new amendment would be in direct conflict with EBMUD’s existing policy position opposing the imposition of retail water use fees or a public goods charge. Based on the discussion during the Legislative/Human Resources Committee, staff is now seeking feedback from the Board on how to proceed in regards to a preferred position and amendments to the bill.

There was extensive Board discussion on the pros and cons of the current recommended position of “Oppose Unless Amended (As Proposed to be Amended)” and the position of “Support If Amended”. The Board also discussed in detail the District’s existing policy position, the funding mechanisms of the bill, potential impacts of a ratepayer assessment to District ratepayers, the basis of the ratepayer assessment (volumetric vs. per account), the tax implications of the bill, and the importance and intent of the bill.

- Addressing the Board were the following: 1) Phoebe Seaton, Leadership Council for Justice and Accountability, highlighted her work with communities without access to safe drinking water and urged the Board to support SB 623; 2) Jennifer Clary, Water Program Manager for Clean Water Action commented on her work on SB 623 and the desire to partner with EBMUD on this issue; 3) Tiffany Eng, California Environmental Justice Alliance, voiced her support for SB 623 and urged the Board to support the bill; 4) Thom Seaton urged the Board to support SB 623; 5) Christina Hecht, University of California Nutrition Policy Institute highlighted her agency’s work to get people clean water instead of sugar-sweetened drinks

and voiced her support for SB 623 and; and 6) Wade Crowfoot, Water Foundation, voiced his support for SB 623 and urged the Board to support the bill.

Director Young offered a motion to change the recommended position on SB 623 from “Oppose Unless Amended (As Proposed to be Amended)” to “Support If Amended”, on the version of the bill as it is proposed to be amended by the author to include a retail water users tax. Director Mellon supported the recommended change in position.

In considering the change in recommended position, the Board also directed staff to seek bill amendments to address the following five issues: 1) Option to impose volumetric tax; 2) Limit exposure to other charges; 3) Provide an exemption for low-income ratepayers; 4) Minimize EBMUD eligibility verification administration costs; and 5) Ensure agriculture is held fully accountable for its share.

- Motion by Director Young, seconded by Director Mellon, to approve a “Support if Amended” position on SB 623 (Monning), carried (5-1) by the following voice vote: AYES (Katz, Linney, Mellon, Young, and McIntosh); NOES (Patterson); ABSTAIN (None); ABSENT (Coleman).

Motion No. 134-17 – Received Legislative Report No. 08-17 and approved positions on the following bills: SUPPORT IF AMENDED (AS PROPOSED TO BE AMENDED) SB 623 (Monning) Water Quality: Safe and Affordable Drinking Water Fund; and OPPOSE H.R. 23 (Valadao) Gaining Responsibility on Water Act of 2017.

20. **General Manager’s Report.**

Senior Civil Engineer Linda H. Hu provided an update on negotiations with Chevron regarding their North Richmond recycled water contract. The current agreement with Chevron expires in December 2017. Staff has submitted two proposals to Chevron for consideration. The first proposal is for a 5-year term and would set the price of recycled water at 65 percent of the price of potable water for that term. The second proposal would move Chevron to the standard non-potable water rate but would also provide them that same rate for any potable water delivered through the North Richmond Facility unless prevented from doing so by specific unusual circumstances (acts of God, etc.). This proposal has a 10-year term. The parties will meet again on July 28 and staff will provide another negotiations update to the Board in October. The Board asked no questions. Next, General Manager Alexander R. Coate announced that the Board had received information in their packets on the District’s plan to conduct a 12-month pilot in the fall to provide audio recordings of regular Board meetings on the District’s website.

REPORTS AND DIRECTOR COMMENTS

21. **Committee Reports.**

- Filed with the Board were the Special Finance/Administration Committee and Planning Committee Minutes of July 11, 2017.

22. Other Items for Future Consideration.

None.


23. Director Comments.

- Director Coleman reported on plans to participate in the following events: ACWA Executive Committee teleconference in Arnold and the Upper Mokelumne River Watershed Authority meeting in Pardee on July 28; ACWA Executive Committee teleconference in Oakland on July 31; Presentation to Contra Costa Realtors in Walnut Creek on August 1; and the Contra Costa Mayors' Conference in San Ramon on August 3.
- Director Katz had no report.
- Director Linney had no report.
- Director Mellon reported attending/participating in the following events: Alameda County Special Districts Association meeting in Dublin on July 12; EBMUD Retirement Board meeting in Oakland on July 20; and form EBMUD employee Ben Reyes' investiture ceremony to become a Contra Costa County Superior Court judge in Martinez on July 21.
- Director Patterson had no report.
- Director Young had no report.
- President McIntosh had no report.

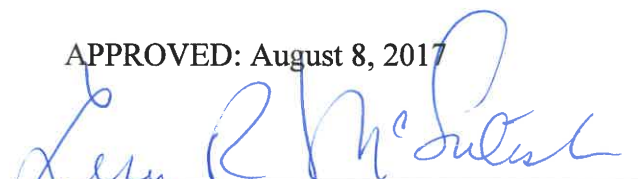
ADJOURNMENT

President McIntosh adjourned the meeting at 3:46 p.m.

SUBMITTED BY:


Rischa S. Cole, Secretary of the District

APPROVED: August 8, 2017


Lesa R. McIntosh, President of the Board