

## MINUTES

**Tuesday, April 26, 2016**

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

### Regular Closed Session Meeting

President Frank Mellon 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 John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Frank Mellon were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Xanthe M. Berry (Items 1a, 1b and 2), Risk Manager Karen K. Curry (Item 1a), Attorney Lourdes Matthew (Item 1b), Human Resources Manager Laura A. Brunson (Item 1b), Operations and Maintenance Department Manager Clifford C. Chan (Item 1b), Assistant General Counsel Frederick S. Etheridge (Item 1c), Attorney Jonathan D. Salmon (Items 1c and 2), Director of Water and Natural Resources Richard G. Sykes (Item 1c), and Director of Wastewater Bennett K. Horenstein (Item 2).

### PUBLIC COMMENT

- Addressing the Board was Antonio Martinez, President, IFPTE Local 21 who commented on staff's presentation regarding the District's current financial status and highlighted some of the choices the Board may have to consider to address EBMUD's future financial position.

### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Frank Mellon announced the closed session agenda. The Board convened to Conference Room 8a/b for discussion.

### Regular Business Meeting

President Mellon 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 John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Frank Mellon were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, and Acting Secretary of the District Rischa S. Cole.

## **BOARD OF DIRECTORS**

President Mellon 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 persons: 1) Rachel Garza, representing the LGBTQ Committee, who thanked the Board and staff for investigating and addressing the committee's concerns, expressed appreciation that the Diversity & Inclusion Office would begin managing the District's Affinity Groups, expressed disappointment in the outcome of the investigation into their concerns, and expressed her opinion about the Assistant to the General Manager misapplying rules and offering special treatment to certain affinity groups; 2) Rosa Merced, representing the LGBTQ Committee, submitted a proposal requesting that the District proclaim the month of June as the annual month of Diversity and Inclusion; 3) René Anglo, representing the LGBTQ Committee, urged the Board to support the proposal presented by Ms. Merced; and 4) Laura Brunson, EBMUD Manager of Human Resources, commented that Ms. Garza had mischaracterized the findings in the investigation letter and offered to meet with her to clarify the findings. She also reminded the Board of the District's practice of keeping investigations confidential because of employee privacy rights and how publicizing investigation findings may make other employees feel uncomfortable about bringing their concerns forward.

## **CONSENT CALENDAR**

- Item 11 was removed from the Consent Calendar for discussion.
  - Motion by Director Coleman, seconded by Director McIntosh, to approve the recommended actions for Items 1-10 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 069-16** – Approved the Regular Meeting Minutes of April 12, 2016.
  2. The following correspondence was filed with the Board: 1) Letter dated April 26, 2016 to the Board of Directors of EBMUD from M. Rosa Merced, LGBTQ Affinity Group Co-Chair

- 2015, 2016 regarding a proposal for the Month of June as official Diversity and Inclusion; 2) Letter (undated) from Antonio Martinez, President, IFPTE Local 21 regarding the District's financial present and possible future; 3) Memorandum dated April 26, 2016 entitled "Drought Recovery Talking Points"; 4) Revised draft copy of District Policy 4.13 – Establishing Water and Wastewater Rates; 5) Draft copy of District Policy 4.53 – Technology Use and Privacy Procedure; 6) Presentation entitled "Water Supply Board Briefing," dated April 26, 2016; 7) Presentation entitled "2016 Water Supply Availability and Deficiency Report," dated April 26, 2016; 8) A copy of a revised page 4 of the April 26, 2016 Water Availability and Deficiency Report BD1; and 9) Presentation entitled "Suspend Implementation of Excessive Water Use Penalty Ordinance," dated April 26, 2016.
3. **Motion No. 070-16** – Awarded a contract to the lowest responsive/responsible bidder Air Liquide in an annual amount, after the addition of taxes not to exceed \$50,000 for supplying liquid oxygen and maintenance and repair services for the Hypolimnetic Oxygenation System at the District's Upper San Leandro Reservoir for three years beginning on or after April 27, 2016 with two options to renew for an additional one-year period for a total cost of \$250,000 under Request for Quotation No. 1608.
  4. **Motion No. 071-16** – Authorized an agreement beginning on or after April 27, 2016 with Construx Software Builders, Inc. in an amount not to exceed \$90,000 for requirements and project management training for staff.
  5. **Motion No. 072-16** – Authorized an agreement with Microdesk, Inc. in an amount not to exceed \$164,824 to provide Building Information Management software support services for the design of the Happy Valley and Sunnyside Pumping Plants Project.
  6. **Motion No. 073-16** – Authorized an agreement with RMC Water and Environment in an amount not to exceed \$1,076,812 to prepare an Environmental Impact Report for the Leland Reservoir Replacement Project pursuant to the California Environmental Quality Act.
  7. **Motion No. 074-16** – Authorized an amendment to the agreement with Renne Sloan Holtzman Sakai, LLP, to increase the agreement ceiling by \$21,000 from \$60,000 to an amount not to exceed \$81,000 for Equal Employment Opportunity discrimination investigation services.
  8. **Motion No. 075-16** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider & Harris, LLP, for specialized legal services related to electrical energy and water law and litigation matters.
  9. **Resolution No. 34078-16** – Fixing The Ward Boundaries Of The Wards For The Purpose Of Electing Directors Therefrom.
  10. **Resolution No. 34079-16** – Adopting Revised Policy 4.07, Investment Policy.
  11. **Resolution No. 34080-16** – Adopting Revised Policy 1.13, Identity Theft Prevention Program; Revised Policy 2.04, Contractual Agreements With Former Employees; Revised Policy 3.05, Considerations For Extension of Water Beyond The Ultimate Service Boundary; Revised Policy 4.13, Establishing Water And Wastewater Rates; Revised Policy

4.20, Use Of District Technology Resources; Revised Policy 9.01, Fire Control And Fuels Management On Watershed Lands; Revised Policy 9.03, Water Supply Availability And Deficiency; And Revised Policy 9.04, Watershed Management And Use.

President Mellon pulled Item 11 for discussion. General Manager Coate reported that the Finance/Administration Committee pulled Revised Policy 3.07, Responsibility To Serve Water Customers to allow staff the opportunity to further review and make additional revisions to the policy. Additionally, he said that there was a suggested edit to Policy 4.13 under the section regarding rate methodology to include the phrase "consistent with best management practices." A copy of the revision was provided to the Board. Mr. Coate also reported that the Committee requested a copy of Procedure 453 - Technology Use and Privacy Procedure, which is linked to Policy 4.20. Next, Finance/Administration Committee Chair John A. Coleman summarized discussions and actions taken by the Committee.

- Motion by Director Coleman, seconded by Director Katz, to approve the revisions to Item 11 by removing Policy 3.07 and revising Policy 4.13, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

## **DETERMINATION AND DISCUSSION**

### **12. Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine highlighted the four bills and the recommended positions contained in Legislative Report No. 06-16. There was discussion regarding the language contained in SB 1262 and SB 1263. The Board requested that staff ensure their concerns regarding portions of the bill language are communicated to the bill authors.

- Addressing the Board was Heinrich Albert, representing the Sierra Club, who commented that SB 1262 and SB 1263 are an important part of managing California's water in a sustainable way and he urged the Board to support the staff recommendation.
- Motion by Director Young, seconded by Director Patterson, to approve the recommended positions on SB 1262 and SB 1263, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

Next, Ms. Dumaine provided an update on the federal bills, both of which relate to providing funding for water infrastructure projects and a program to assist with reducing lead in drinking water supplies and delivery systems. Staff recommends support for both bills.

- Motion by Director Katz, seconded by Director Young, to approve the recommended positions on H.R. 4653 and S. 2588, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

In concluding, Ms. Dumaine provided status updates on the Water Resources Development Act along with the federal drought legislation bill and said she would keep the Board apprised on any new efforts.

**Motion No. 076-16** – Received Legislative Report No. 06-16 and approved positions on the following bills: SUPPORT IF AMENDED SB 1262 (Pavley) Water Supply Planning; SUPPORT IF AMENDED SB 1263 (Wieckowski) Public Water System: Permits; SUPPORT H.R. 4653 (Tonko) Assistance, Quality, and Affordability Act of 2016; and SUPPORT S. 2588 (Cardin) Get the Lead Out Act of 2016.

- 13a. **File the Water Supply Availability and Deficiency Report in conformance with District Policy 9.03, and declare that the District's water supply is sufficient for meeting customer demands in 2016.**

Operations and Maintenance Department Manager Eileen M. White presented updates on the statewide and local water supply. She reported that the state's two largest reservoirs, Shasta and Oroville, have continued to rise in elevation and are currently at 95 percent capacity. EBMUD's water supply has seen significant improvement over the past year. The East Bay received 25.1 inches (99% of average) precipitation and the Mokelumne Basin's four-station average is 47.8 inches (108% of average). Total system storage is 551,000 acre feet (over 150,000 acre feet more than last year at this time) and projections are for runoff to be between 740-815,000 acre feet.

Ms. White reported that over the last 12 months, compared to the same period in 2013, customers have cut their water use by 25 percent. She pointed out that over the last four years as the drought worsened and the water supply continued to decline, the District's investments in conservation, recycling, and supplemental supply were key to managing operations through this critical drought. Staff projects system storage to be between 605-630,000 acre feet without importing any water from the Sacramento River and ending the water year by refilling our system. Ms. White said staff will be providing the Water Supply Availability and Deficiency Report and will ask the Board to consider suspension of the excessive water use penalty. She noted that staff will come back to the Board on May 24<sup>th</sup> after the District receives information on the Governor's and the State Water Resources Control Board's (SWRCB) direction about conservation mandates. At that time, staff will be asking the Board to consider changes to the drought stage, changes to Section 28 of the District's Regulations Governing Water Service to Customers and to consider stopping the super saver program. There was discussion regarding the timing for the change in drought stage and other drought-related actions. General Manager Coate advised that Customer and Community Services Manager Sherri A. Hong would provide information regarding the District's plan to address drought-related actions during her upcoming presentation.

Engineering Manager Lena L. Tam presented the Water Supply Availability and Deficiency Report. The report evaluates the adequacy of the current year's (2016) water supply to meet customer needs and serves as the basis for the Board to consider water conservation and demand management measures as part of the District's Drought Management Guidelines. The report also serves as the basis for the Board to determine availability of water for potential use by others. She noted that for 2016, the projected September 30 total system

storage is between 595-630,000 acre-feet, resulting in the District's water supply being sufficient to meet customer demands in 2016. The 2016 assessment also concludes that projected runoff and water storage require designating Below Normal year type flows in the lower Mokelumne River under the District's Joint Settlement Agreement (JSA). The 2016 water year falls within the Below Normal year type category under the terms of the District's JSA, which establishes fishery flow releases by water year type.

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

**Motion No. 077-16** – Filed the Water Supply Availability and Deficiency Report in conformance with District Policy 9.03, and declared that the District's water supply is sufficient for meeting customer demands in 2016.

**13b. Defer taking anticipated drought-related actions until the State Water Resources Control Board takes action on May 18.**

As mandated by the SWRCB, the District is currently required to meet a 16 percent conservation goal through April 2016. The District, from June 2015 through March 2016, has achieved a 23 percent savings. Since precipitation and snowpack in parts of California in 2016 have reached average conditions, the SWRCB has indicated that it will consider modifying the Emergency Regulations. Staff is recommending that the Board defer taking anticipated drought-related actions until the SWRCB takes action on May 18. Following SWRCB action, staff will bring to the Board recommendations regarding declaring an end to the District's water shortage emergency, making associated changes in Section 28 of the District's Regulations Governing Water Service to Customers, and changes in drought stage and drought surcharge levels.

There was considerable discussion about the timing for the Board to make decisions regarding drought-related actions. There was consensus by the Board to modify the recommended action for Item 13b and to consider drought-related actions at its May 10 meeting, in advance of the SWRCB's direction regarding conservation mandates.

- Motion by Director Katz, seconded by Director Patterson, to approve the modified recommended action carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 078-16** – Approved consideration of drought-related actions at the May 10 Board meeting, in advance of the State Water Resources Control Board taking action on May 18.

**14. Authorized suspending the implementation of the Excessive Water Use Penalty Ordinance effective May 3, 2016 as a result of the District's improved water supply conditions.**

Customer and Community Services Manager Sherri A. Hong presented staff's recommendation to suspend implementation of the Excessive Water Use Penalty Ordinance. Projections indicate that the District's projected end of year storage will be sufficient to meet next year's water demand. As the District's water supply has improved and drought conditions have eased significantly, staff recommends suspending the implementation of the ordinance effective May 3. Suspending implementation of the ordinance will end the enforcement and collection of the \$2.00 per unit penalty for any water use in excess of 80 hundred cubic feet/bimonthly billing cycle. The ordinance structure would remain in place for implementation when needed. If approved, next steps include notifying customers of the drought status including suspension of the ordinance, continuing to encourage efficient water use and continuing to provide conservation education and services. There was Board discussion regarding the recommendation, how this information will be communicated to customers, the timing for suspending the ordinance, and how tools, such as the ordinance, will be used in future droughts.

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

**Resolution No. 34081-16** – Authorizing The Suspension Of The Implementation Of Excessive Water Use Penalties.

**15. General Manager's Report.**

Operations and Maintenance Department Manager Eileen M. White presented the water supply update during Item 13a. General Manager Coate reported that the 2016 Critical Drought Action Plan Update had been provided in the Board's packet.

**REPORTS AND DIRECTOR COMMENTS**

**16. Committee Reports.**

- Filed with the Board were the Planning and Legislative/Human Resources Committee Minutes of April 12, 2016.

**17. Other Items for Future Consideration.**

- At the request of Director Young, staff will discuss the impacts of gasoline-powered engines on water quality in District reservoirs at an upcoming Planning Committee meeting.
- At the request of Director Young, staff will provide the status of the East Bay Watershed Master Plan update.

- At the request of Director Coleman, staff will provide information on what happens during emergencies if Board members are incapacitated and cannot approve emergency actions at a future Legislative/Human Resources Committee meeting.

**18. Director Comments.**

- Director Coleman reported attending/participating in the following events: Las Aguilas de Diablo Dinner on April 14 in Moraga; Oakland Strokes meeting on April 18 in Oakland; ACWA teleconference meeting on April 18 in Oakland; and ACWA teleconference meeting on April 25 in Oakland. He reported on plans to attend/participate in the following upcoming events: League of Women Voters on April 28 in Oakland; Guest speaker for Troop 243-Eagle Court on April 30 in Lafayette; ACWA Conference on May 4 in Monterey; Meeting with San Joaquin County on water issues on May 4 in Monterey; Contra Costa County Mayors' Conference on May 5 in Pleasant Hill; and ACWA teleconference meeting on May 9 in Oakland.
- Director Katz reported attending/participating in the following events: Celebration honoring Jeff Hobson's 17 years of service with Transform on April 14; Meeting with Oakland Mayor Schaaf on April 19; California Water Policy 25 Conference in Davis on April 20; and Rooted in Resilience on April 23.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Patterson shared that he would be using information from Director Katz's white paper on climate change in his speech at the District's Earth Day event on April 27. He also shared that former Major League baseball player Curt Flood will be featured on a U.S. postage stamp.
- Director Young reported attending/participating in the following events: MGO Democratic Club Legislative Reception on March 17; Joint meeting with Director McIntosh and the West County Wastewater District regarding their upgrades, operational impacts and future plans on March 24; Meeting with staff and Directors Mellon and Patterson regarding the Harvest Power project in Oakland on April 4; Rising Sun Energy Bright Night event that EBMUD sponsored on April 21; and the Upper Mokelumne Regional Water Authority meeting at Pardee Center on April 22.
- President Mellon reported attending/participating in the following events: Lake Merritt Breakfast Club meeting to provide an update on EBMUD, the drought and Delta twin tunnels on April 14 and the Contra Costa Special Districts Association meeting in Martinez on April 18.



**ADJOURNMENT**

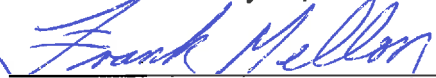
President Mellon adjourned the meeting at 3:26 p.m.

SUBMITTED BY:



Rischa S. Cole, Acting Secretary of the District

APPROVED: May 10, 2016



Frank Mellon, President of the Board