

MINUTES

Tuesday, January 14, 2014

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

Regular Closed Session Meeting

Vice-President Foulkes called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. in the Administration Center Board Room.

ROLL CALL

Directors John A. Coleman, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and Vice-President Katy Foulkes were present at roll call. President Andy Katz arrived at 11:10 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, and Attorney Derek McDonald (Item1).

PUBLIC COMMENT

Addressing the Board were the following persons: 1) Keith Beckwith, Associate Civil Engineer, provided written materials to the Board of Directors regarding the District's deferred compensation programs and referenced grievances that were filed by IFPTE Local 21 and AFSCME Local 2019; 2) M. Rosa Merced, representing AFSCME Local 2019, commented that the District should reconsider funding the customer survey and save the money for other District priorities; and 3) Mark Foley, representing AFSCME Local 2019, commented on a letter written by Employee Relations Manager Michael Rich, dated November 19, 2013, and said it was in fact part of the Memoranda of Understanding (MOU) negotiated by the parties and should be adopted by the Board of Directors. He presented a letter from Sharon McAleavey AFSCME Business Agent, requesting that Mr. Rich provide a letter to the Union saying that his November 19, 2013 letter to Mr. Foley is subject to the grievance procedure in the MOU.

BROWN ACT BRIEFING

Attorney Saji Pierce presented the annual Brown Act and ethics update. She highlighted the Ethics Policy of the EBMUD Board of Directors (Policy 6.04). She summarized recent legal developments related to AB 408 (Bonta) which amends the Municipal Utility District Act and changes how EBMUD elections are conducted. AB 408 provides the Board with appointment authority when one candidate runs for election or when no candidate runs for election. It allows (but does not require) the Board to use the appointment process in lieu of holding an election. Ms. Pierce pointed out that its purpose is to reduce election-related costs for unopposed elections. She noted that the Office of General Counsel will be providing ongoing advice on how this legislation will affect EBMUD's 2014 election. Ms. Pierce also summarized provisions of SCA 3 (Leno) which will go to the voters in the June 2014 primary election. If approved, local governments will have to fund the entire cost of Brown Act and Public Records Act compliance, with no state reimbursement.

Next, Ms. Pierce highlighted three new laws that will expand the Fair Political Practices Commission (FPPC) authority. AB1090 (Fong) will give the FPPC authority to provide written or telephonic advice; AB 552 (Fong) will give the FPPC more enforcement of and collection authority for delinquent fines; and AB 409 (Quirk-Silva) will allow the FPPC to develop a system for electronic filing of official's statements of economic interests (Form 700). In concluding, Ms. Pierce summarized a recent legal ruling on Lassen Municipal Utility District v. Kinross Gold USA, Inc. regarding Brown Act compliance.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Katz announced the Closed Session agenda. The Board convened to Conference Room 8A/B for discussion.

Regular Business Meeting

President Andy Katz 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, Katy Foulkes, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Andy Katz were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins and Secretary of the District Lynelle M. Lewis.

BOARD OF DIRECTORS

President Katz led the Pledge of Allegiance.

Election of President of the Board

President Katz opened the floor for nominations for President of the Board for 2014.

- Motion by Director McIntosh, seconded by Director Foulkes, to nominate Director Andy Katz for President of the Board of Directors.

President Katz called for additional nominations, none came forward, and he closed the nomination period.

The motion to elect Director Katz for President of the Board of Directors for 2014 carried (7-0) by the following roll call vote: AYES (Coleman, Foulkes, Linney, McIntosh, Mellon, Patterson, and Katz); NOES (None); ABSTAINED (None); ABSENT (None).

- **Motion No. 001-14** -- Elected Director Andy Katz as President of the Board of Directors for 2014.

Director Katz thanked the Board for the opportunity to serve as the Board's President for the coming year and said he looks forward to working with the Board.

Election of Vice-President of the Board

President Katz opened the floor for nominations for Vice-President of the Board.

- Motion by Director Coleman, seconded by Director McIntosh, to nominate Director Katy Foulkes for Vice-President of the Board.

President Katz called for additional nominations, none came forward, and he closed the nomination period.

The motion to elect Director Katy Foulkes for Vice-President of the Board of Directors carried (7-0) by the following voice vote: AYES (Coleman, Foulkes, Linney, McIntosh, Mellon, Patterson, and Katz); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 002-14 -- Elected Director Katy Foulkes as Vice-President of the Board of Directors for 2014.

Committee Assignments

President Andy Katz announced that a memorandum had been provided regarding 2014 Committee Assignment preferences. He requested that Board members submit their committee assignment preferences to Secretary Lewis by January 21 and that committee assignments would be presented for Board approval on January 28.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PRESENTATION

General Manager Coate announced that the District is the proud recipient of the Business Recovery Managers Association (BRMA) Award of Excellence for Business Continuity for 2013. He pointed out that each year BRMA recognizes corporations or individuals who excelled in the areas of contingency planning, emergency management, and business recovery. The award was presented on December 5, 2013 as part of the BRMA Annual Luncheon. General Manager Coate acknowledged Information Services Supervisor Dick Evans and Manager of Business Continuity Julia Halsne for their involvement in BRMA. The Board and staff congratulated and acknowledged them on their work in helping the District receive this award.

PUBLIC COMMENT

Addressing the Board were the following persons: 1) Daniel Solli, Oakland resident, spoke on behalf of neighbors who oppose the proposed work covered in the Supplemental Environmental Impact Report (EIR) for the Estates Reservoir Replacement Project. Specifically they opposed removal of trees and bushes, installation of an interpretive sign, and creation of a path. He said the work conflicts with the original EIR, the path would create a public nuisance, and the neighbors asked the Board to stop this work; 2) Nicholas Solli, Oakland resident, commented that the path is a waste of money, is not needed, and would create a hazard. Additionally, he said that there is no

need to destroy the bushes and trees and asked if EBMUD would grant permission to the neighbors to pay for pruning of the trees; and 3) Jane Sinton, Oakland resident, said she concurred with the comments of the previous speakers. Director Foulkes said she had received email on this matter and asked General Manager Coate to provide an update. Mr. Coate said that EBMUD will be relocating the signage based on information received from the Oakland Landmark Preservation Advisory Board and will be proceeding to remove the trees that are identified for removal except the two trees identified for removal to allow the path. He went on to say that staff will continue to explore EBMUD's options regarding the requirements for the path since it currently is identified as mitigation in the EIR; and 4) Ivette Rivera, EBMUD Gardner Foreman, provided the Board with a packet of materials regarding her concerns that: a) she is performing the same duties as supervisors; b) District Policy 2.21 and District Procedure 216 violate the Meyers-Milias-Brown Act by denying represented employees the right to individual representation; and c) a 1985 arbitration award is being misinterpreted and applied to deny due process rights. President Katz said that staff would provide her with a response and copy the Board. General Manager Coate commented that on January 9, 2014 staff provided the Board with an information memo on this issue.

CONSENT CALENDAR

- Items 1, 6 and 10 were removed from the Consent Calendar for discussion.
 - Motion by Director Coleman, seconded by Director Foulkes, to approve Items 2-5, 7-9 and 11 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Foulkes, Linney, McIntosh, Mellon, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 003-14** -- Postponed approval of the December 10, 2013 Regular Meeting Minutes (for corrections).
- Director Mellon pulled Item 1 from the Consent Calendar to comment that he did not receive the Minutes in his board packet. He expressed concern that the Minutes had not reflected discussion and comments about the letter from Michael K. Rich, Manager of Employee Relations, to Brenda Wood, Business Agent, AFSCME Local 2019, regarding flex-staffing two Network Analysts positions. Director Coleman pointed out that the Minutes were posted online and President Katz pointed out that the letter was filed in the Minutes as Item No. 2 (Correspondence Filed with the Board). Director Foulkes recalled that she had mentioned saying the letter would be referenced in the Minutes. She suggested postponing the approval of the Minutes so that Director Mellon can provide language to be inserted in the Minutes for approval at the January 28 meeting. Director Mellon concurred with this suggestion. Additionally, Director Coleman pointed out that although he was absent (excused) from the December 10 meeting, he electronically submitted his comments, but they were not reflected in the Minutes. President Katz said that Board members should file corrections with the Secretary before the end of the week.
 - Motion by Director Foulkes, seconded by Director Mellon, to postpone approval of the Minutes to allow corrections, carried (7-0) by the following voice vote: AYES (Coleman, Foulkes, Linney, McIntosh, Mellon, Patterson, and Katz); NOES (None); ABSTAINED (None); ABSENT (None).

2. The following correspondence was filed with the Board: 1) Booklet entitled "Annual Ethics Policy & Brown Act Update," dated January 2014; 2) Presentation entitled "Annual Brown Act and Ethics Update," dated January 2014; 3) Speaking notes from Keith Beckwith along with materials regarding the Deferred Compensation Advisory Committee; 4) Letter dated January 3, 2014 to Michael Rich, Manager of Employee Relations, from Sharon McAleavey, AFSCME Business Agent, regarding interpretation and implementation of the November 19, 2013 letter agreement related to the flex-staffing of two Network Analyst positions; 5) Memorandum dated January 9, 2014 to Board of Directors from Andy Katz, President, regarding 2013 Committee Assignment Preferences; 6) Various correspondence submitted by Ivette Rivera regarding a classification issue and disparate treatment; 7) Presentation entitled "Fact Finding Regarding Meter Reader/Mechanic" dated January 14, 2014; 8) Memorandum dated January 14, 2014 to Board of Directors, from Xavier J. Irias, Director of Engineering and Construction, regarding Estates Reservoir Replacement Project – Signage and Path Update; 9) Memorandum dated January 14, 2014 to Board of Directors, from Nicholas J. Irias, Manager of Information Systems, regarding Customer Information System Outage; 10) Newspaper article dated January 11, 2014, from the Las Vegas Sun, entitled "Conservation Falls Short for Waterways; 11) Presentation entitled "Water Supply Briefing" January 14, 2014; and 12) Presentation entitled "Dry Year Planning Water Year 2014" dated January 14, 2014.
3. **Motion No. 004-14** -- Awarded a contract to the lowest responsive/responsible bidder Southland Pipe Corporation in the estimated annual amount after the addition of taxes of \$207,371.00 for supplying various sized steel mortar-lined pipe fittings for various District sites for the period beginning February 1, 2014, and ending January 31, 2017, with two options to renew for additional one-year periods for a total cost of \$1,036,855.00 under Request for Quotation No. 1412.
4. **Motion No. 005-14** -- Awarded a contract to the lowest responsive/responsible bidder, GSE Construction Company, Inc., in the amount of \$2,390,000 for construction of the Wet Weather Facilities Chemical Systems Improvements Phase 2 Project under Specification SD 348.
5. **Motion No. 006-14** -- Awarded a contract to the lowest responsive/responsible bidder, C. Overaa & Co., in the amount of \$830,000 for construction of the Main Wastewater Treatment Plant Site Utility Improvements and Guard Structure Installation Project under Specification SD 359.
6. **Motion No. 010-14** -- Authorized an agreement with Evans/McDonough Company Inc. (EMC) in an amount not to exceed \$96,150 for customer research services during the period January 14, 2014 through December 30, 2016.
 - Director Mellon pulled Item 6 from the Consent Calendar for discussion. He expressed concern about the number and content of proposed survey questions. He said that he was not prepared to vote on this item without a sense of what questions will be asked of customers. Special Assistant to the General Manager Cheryl A. Farr commented that the

list of 200 questions was a comprehensive list of all the questions that had been asked over a ten-year period, and was not meant to be an example of the upcoming survey questions. President Katz asked about the time sensitivity of this contract and whether the survey would assist in the decision making process on drought response. Ms. Farr said that if the contract is approved today, the survey would be conducted in mid-February and full data would be available in late March or early April. She pointed out that she had reviewed the questions with the Manager of Customer & Community Services and also took input received from the Board over the last couple of meetings. Ms. Farr said that staff would provide the Board with a preview of the questions before the survey is finalized. Director Linney expressed concern about delaying the survey in light of a potential drought this year and recommended moving forward with the contract. Director Coleman also recommended moving forward with the contract.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended action for Item 6, carried (6-1) by the following roll call vote: AYES (Coleman, Foulkes, Linney, McIntosh, Patterson, and Katz); NOES (Mellon); ABSTAINED (None); ABSENT (None).
- 7. **Motion No. 007-14** -- Authorized an agreement with Montgomery, Watson, Harza Americas, Incorporated, in an amount not to exceed \$599,908, for consultant services related to completing the Mokelumne Aqueducts Corrosion Optimization Study.
- 8. **Motion No. 008-14** -- Authorized agreements with 19 vendors and various public agencies in our services area in an aggregate estimated amount of \$1,000,000 annually for paving, striping, sealing, concrete repair and other related services at locations throughout the District's service area during the period January 15, 2014 through December 31, 2019 (AJW Construction; American Asphalt Repair; Black Gold Paving & Sealing; Bond Black Top, Inc.; Bruce Enterprises, Inc.; California Pavement Maintenance Company; Carone & Co., Inc.; Cliff Swisher Custom Concrete; Coastal Paving; County Paving Co., Inc.; John W. Hertzig, Contractor; JV Lucas Paving, Inc.; MCE Corporation; MCK Services, Inc.; Morgan-Bonnano Development; O.C. Jones & Sons, Inc.; Pacific General Engineering; Ransome Co.; VSS-International; and Public Agencies) and authorized additional agreements with companies that meet District standards and offer pricing at or below the range described in the current proposed contracts to increase flexibility and ensure vendor availability pursuant to this recommendation.
- 9. **Motion No. 009-14** -- Authorized an amendment to an agreement with RMC Water and Environment in an amount not to exceed \$180,000, increasing the agreement value from \$1,692,000 to \$1,872,000, for confidential hydrologic and hydraulic modeling and other specialized technical assistance in support of the District's ongoing negotiations with state and federal regulatory agencies concerning discharges from the District's wet weather facilities.
- 10. **Motion No. 011-14** -- Adjusted the Board of Directors' monthly compensation effective January 31, 2014 by \$34 per month or 3 percent and, beginning in January 2015, conduct a review of Board compensation annually during the first Board meeting of the calendar year.
- Director Mellon pulled Item 10 from the Consent Calendar to say that he cannot justify the increase at this time for the following reasons: a) board performance in handling the issues

over the past year; b) public perception of how boards are rewarding themselves particularly when they are in a part-time capacity; and c) displeasure with how the collective bargaining process was handled over the past year.

- Motion by Director Mellon, seconded by Director Coleman, to take no action this year on Board salaries.

Director Linney commented that the proposed adjustment is better than a large increase in subsequent years. He went on to say that the compensation helps attract people who want to be public servants and not just those who have the means to get into office. Director Linney said that the Board has done a very good job of making sure there aren't excesses at the District. Director Patterson commented that the Board has enormous responsibility far beyond what happens during the collective bargaining process. He also commented the adjustment is not an enormous amount of money, but if the Board comes back later with a 10% increase it will look out of line.

- Director Linney presented an "amendment" to approve the recommend action for Item 10 which was seconded by Director McIntosh. The motion carried (5-2) by the following roll call vote: AYES (Foulkes, Linney, McIntosh, Patterson, and Katz); NOES (Coleman and Mellon); ABSTAINED (None); ABSENT (None).

President Katz announced that the amendment passed and that the Board would vote on the motion to adopt the staff recommended action on Item 10.

- Motion by Director Mellon to reduce the monthly compensation to \$30 instead of \$34 to make the monthly compensation \$1,150 per month. The motion "failed" for lack of a second.

Next, the Board voted on the motion by Director Linney to approve the recommended action for Item 10. The motion carried (5-2) by the following roll call vote: AYES (Foulkes, Linney, McIntosh, Patterson, and Katz); NOES (Coleman and Mellon); ABSTAINED (None); ABSENT (None).

General Counsel Collins pointed out that the staff recommendation included a recommendation that the Board return to conducting a regular annual review of its compensation during the first Board meeting of the calendar year commencing in January 2015. Additionally, the Board's approval would amend prior Board motion 230-03 by changing the schedule to the Board's annual review and use COLA information from the prior year as the basis for the Board's discussion. The Board concurred.

11. **Resolution No. 33962-14 -- Revising Authority Of General Manager To Sell Electric Power.**

DETERMINATION AND DISCUSSION

12. Legislative Update.

Legislative/Human Resources Committee Chair Lesa R. McIntosh announced that the committee met this morning and voted unanimously to support all four federal initiatives proposed by staff.

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

Motion No. 012-14 -- Approved four EBMUD 2014 Federal Initiatives: 1) Seek federal funding opportunities for infrastructure projects via any new and existing federal programs; 2) Pursue federal funding for EBMUD's three Water Resources Development Act (WRDA) authorized projects - the San Ramon Valley Recycled Water Project, the Integrated Regional Recycled Water Program, and the Bay Area Regional Desalination Project; 3) Maintain WRDA authorization requests and seek funding for the Regional EBMUD Seismic Component Upgrade Program and the San Ramon Valley Recycled Water Project; and 4) Advance EBMUD's Delta needs with its congressional delegation and appropriate federal agencies.

Manager of Legislative Affairs Marlaigne K. Dumaine presented an overview of federal and state legislative issues. She reported that in late 2013, Congress reached agreement on a budget framework and approved a general budget bill. However, specific program spending levels must still be decided upon and Congress continues to work to complete the spending bills that will essentially implement the budget. In addition to these fiscal issues, she noted that Congress' domestic policy agenda is likely to focus on issues of interest to EBMUD, such as infrastructure, water supply reliability, and the Sacramento-San Joaquin Delta. Next, she reported that congressional efforts to reauthorize the WRDA gained momentum in 2013, with a final WRDA bill expected to be brought forward in 2014, provided differences surrounding project authorizations and the creation of a Water Infrastructure Financing and Innovation Act (WIFIA) are resolved. A new WRDA bill is not expected to contain traditional earmarks and will likely require enhanced interaction with the administration to seek support for project assistance.

Ms. Dumaine reported that at the state level Governor Brown presented his budget last week and announced that the state has a \$3 billion surplus. A constitutional amendment will go on the November 2014 ballot to decide how the surplus revenue will be managed. In concluding, she reported that water bond discussions have started. There was discussion about Congressman George Miller's decision to retire after 40 years of service in Congress and possible replacements.

13. **Adopt a Resolution Implementing the District's Last, Best And Final Offer Regarding The Salary For The Job Classification Of Meter Reader/Mechanic Pursuant To The Recommendations Of The Fact Finding Panel.**

Manager of Employee Relations Michael K. Rich presented background information on the findings and recommendations regarding the salary for the Meter Reader/Mechanic job classification. He reported that District staff met and conferred with AFSCME Local 444 regarding the Meter Reading & Maintenance Division, including the salary for two new job classifications. The meet and confer concluded with the parties at impasse on the salary for the new job classification of Meter Reader/Mechanic. Local 444's position is Salary 55, which pays a monthly rate of \$5,147 to \$5,958. The District's position is Salary 54, which pays a monthly rate of \$5,023 to \$5,815. The difference between Salary 55 and Salary 54 is 2.5 percent. Mr. Rich said the non-binding recommendation of the Fact Finding Panel is Salary 54, which is consistent with the District's last, best and final offer prior to declaration of impasse. The parties went through impasse proceedings, including Fact Finding, which resulted in findings and recommendations from the Fact Finding Panel that adopted the District's position on the salary for the Meter Reader/Mechanic job classification.

- Motion by Director Mellon, seconded by Director Linney, to accept the staff recommendation on Item 13, carried (7-0) by the following voice vote: AYES (Coleman, Foulkes, Linney, McIntosh, Mellon, Patterson, and Katz); NOES (None); ABSTAINED (None); ABSENT (None).

Resolution No. 33963-14 -- Implement The District's Last, Best And Final Offer Regarding The Salary For Meter Reader/Mechanic Class Pursuant To The Recommendations Of The Fact Finding Panel.

14. **General Manager's Report.**

General Manager Coate reported that staff provided a summary of committee topics covered in 2013 along with a forecast of topics staff proposes for the first six months of 2014. He also reported that staff provided the 2013 Interdepartmental Committees Annual Reports in the packet. Next, Mr. Coate reported that staff provided a memorandum at the Board's places regarding the Customer Information System and Financial Information System outage that took place on Wednesday, January 8. During the outage web self-service was not available and the Contact Center's ability to assist customers was limited. Information Systems Manager Nicholas J. Irias provided an update on the cause of the outage, actions taken by the District to inform customers of the problem, and resolution of the problem. He reported that both systems are fully operable again but the District will continue to analyze the root cause of the outage and assess the effectiveness of the District's response.

Operations and Maintenance Department Manager Eileen M. White presented the water supply update. She reported that from January through June 2013 the Mokelumne watershed received 9.8 inches of precipitation and the East Bay received 3.5 inches of precipitation. The water year ended with 33.96 inches of precipitation. Ms. White reported that total

system storage for the water year beginning October 1, 2013 is 542,130 acre feet. Since that time the East Bay received 2.57 inches of precipitation, the Mokelumne received 4.6 inches, the snow depth is 9 inches, and snow water content is 2.1 inches. Ms. White pointed out that January through June 2013 was the driest on record in the East Bay and the Mokelumne watersheds. Ms. White noted that because of the very dry conditions, water production for November and December has been averaging about 30 million gallons per day (mgd) higher than last year at this time, with average water production at 211 mgd.

In concluding, Ms. White presented an overview of water year 2014 planning. She said that staff will be presenting planning options at the January 28 meeting on voluntary or mandatory rationing and potential use of the Freeport facility. In February staff will be presenting planning options regarding drought rates and customer outreach. Board members suggested that staff provide the board with speaking points on the current water shortage, water conservation and recycling.

General Manager Coate reported that the December 2013 Monthly Report had been provided in the Board's packet. Lastly, he announced that Director of Administration Carol Y. Nishita would be retiring effective January 24, 2014.

REPORTS AND DIRECTOR COMMENTS

15. Committee Reports.

- Filed with the Board were the Minutes of the December 10, 2013 Planning and Legislative/Human Resources Committees.

16. Director Comments.

- Director Foulkes reported meeting with Oakland City Councilmember Patricia Kernighan regarding food waste for the Wastewater Treatment Plant on January 6; meeting with Oakland City Councilmember Noel Gallo regarding food waste for the Wastewater Treatment Plant on January 8; and participating in the Freeport Regional Water Authority teleconference on January 9.
- President Katz had no comment.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Mellon reported visiting the Molokai Water Authority during his visit to Hawaii from December 11-17, 2013. He reminded the Board of their upcoming campaign filing obligation.
- Director Patterson had no comment.

- Director Coleman reported attending/participating in the following events: Executive Committee meeting of the Boy Scouts of America, Mount Diablo Silverado Council, on January 13 in Pleasant Hill; and the ACWA Executive Committee teleconference call on January 14 in Oakland. He reported on upcoming plans to attend/participate in the following: ACWA sustainability teleconference meeting on January 15; ACWA Executive Committee teleconference call on January 16; CASA Mid-Year Conference on January 17 in Palm Desert; ACWA Executive Committee teleconference call on January 21 in Oakland; and a Rotary Club speaking engagement on January 22 in San Ramon.


ADJOURNMENT

The meeting was adjourned at 3:09 p.m.

SUBMITTED BY:


Lynelle M. Lewis, Secretary of the District

APPROVED: January 28, 2014


Andy Katz, President of the Board

