

MINUTES

Tuesday, October 27, 2015

**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, Attorney Lourdes Matthew (Item 1a), Attorney Derek T. McDonald (Item 1a), Director of Operations and Maintenance Michael J. Wallis (Item 2), and Attorney Jonathan D. Salmon (Item 2).

PUBLIC COMMENT

- Addressing the Board was Ruben Rodriguez, 1st Vice President, AFSCME Local 444, who expressed concern regarding the contract negotiations with Harvest Power and especially the staffing for preprocessing food waste. He noted that Local 444 does not want to be known as the union that allowed contracting out of a public facility when the work could be performed by District staff. He also noted that discussions between the union and the District on this topic are not meetings, but are considered meet and confers.

SOCIAL MEDIA PRESENTATION

General Counsel Craig S. Spencer introduced Kara Ueda from Best, Best & Krieger, LLP who gave a presentation to the Board entitled "Social Media Use by Public Agencies and Elected Officials". Mr. Spencer noted that the District recently adopted social media policies and procedures and highlighted the social media platforms currently used by the District.

Ms. Ueda reviewed statistics about social media use by the public, examples of how and why public agencies use social media and how that use can violate the Brown Act. Ms. Ueda explained personal/campaign use versus official use and how the public can request social media related communications via the Public Records Act. Ms. Ueda concluded her presentation by highlighting the best practices for social media use by public agencies and elected officials.

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 Frank Mellon called to order the Regular Business Meeting of the Board of Directors at 1:19 p.m. in the Administration Building Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Lynelle M. Lewis.

BOARD OF DIRECTORS

President Mellon led the Pledge of Allegiance.

PRESENTATION

General Manager Alexander R. Coate reported that the Partnership for Safe Water awarded the Orinda Water Treatment Plant the 2015 "15-Year Directors Award – Treatment Program" and recognized the Walnut Creek, Lafayette, Upper San Leandro, and Sobrante Water Treatment Plants (WTPs) with their annual "Phase III Directors Award." In addition, the Orinda Water Treatment Plant received the renewal of the "Phase IV Excellence Award." Mr. Coate said that these awards were presented to EBMUD at the annual American Water Works Association Conference in June 2015. He said that the water treatment plant operators, supervisors, and superintendents consistently provide high quality drinking water to our customers, making awards like this possible. Mr. Coate pointed out that the Process Engineering Unit also supports the WTPs and the partnership process.

On behalf of the Board, Director Marguerite Young acknowledged the staff for a job well done and presented the awards to the following employees: Superintendent Water Treatment (East Area) James F. Smith; Superintendent Water Treatment (West Area) Roberto C. Cortez; Water Treatment Supervisor (Orinda) Christopher G. Burquez; Associate Civil Engineer (Process Engineering) Cindy Hunt; Water Treatment Supervisor (Lafayette) Anthony L. Jin; Water Treatment Supervisor (Walnut Creek) Stephen J. Lackenbauer; Senior Civil Engineer (Process Engineering) Hubert Lai; Water Treatment Supervisor (Sobrante) Bryan G. Miller; Senior Water Treatment Operator (Sobrante) Clarence R. Peralta; and Senior Water Treatment Operator (Upper San Leandro) Alejandro E. Rojas.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following persons: 1) M. Rosa Merced, AFSCME Local 2019, thanked the Board and the District for its support of the Oakland Pride Parade and Festival on September 13, 2015 and for the opportunity for staff to provide information to the community; 2) Ruben Rodriguez, 1st Vice-President, AFSCME Local 444, thanked AFSCME Local 2019 for representing the District at the District sponsored booth during the Oakland Pride event; 3) Rachel Garza, Chair, Lesbian Gay Bisexual Transgender Pride (LGBT) Committee, voiced concern about discrimination and disparate treatment towards the Committee by staff and asked the Board to step in to resolve their concerns; 4) Vinella Garcia, representing the LGBT Committee, expressed concern about staff singling out the Committee's decorations for not being flame retardant and about the requirement for the artist to sign an art loan agreement for the decorations; and 5) Edward De Melo, customer, urged the District to work with the City of Oakland to resolve his claim for property damage. Director Young said she would facilitate discussion with the City regarding this matter.

CONSENT CALENDAR

- Items 8.1 and 8.2 were removed from the Consent Calendar for discussion.
 - Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for Items 1-7 and 9 on the Consent Calendar, carried (6-0) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (Coleman).
1. **Motion No. 177-15** – Approved the Regular Meeting Minutes of October 13, 2015.
 2. The following correspondence was filed with the Board: 1) Presentation entitled "Social Media Use by Public Agencies and Elected Officials," dated October 27, 2015, presented by Kara Ueda, Partner, Best Best & Krieger LLP; 2) Email distributed by Vinella Garcia, from Thomas Verelley, dated May 21, 2015, to Rene Anglo, regarding "art loan agreement;" 3) Handout entitled "Girvin Drive Update" distributed by Edward De Melo; 4) Presentation entitled "Near-Term Projects and Staffing Needs Engineering and Construction Department," dated October 27, 2015; 5) Presentation entitled "Chabot Dam Seismic Upgrade Pilot Project Labor Agreement Update," dated October 27, 2015; 6) Letter (undated) to EBMUD Board Members, submitted by Andreas Cluver, Secretary and Treasurer of Alameda County Building and Trades Council, regarding Public Project Labor Agreements in Alameda County; and 7) Presentation entitled "Butte Fire Response," dated October 27, 2015.

3. **Motion No. 178-15** – Awarded a contract to the lowest responsive/responsible bidder, Alisto Engineering Group, Inc. in the amount of \$174,950 for construction of Crockett Aqueducts Cathodic Protection Improvements under Specification 2109.
 4. **Motion No. 179-15** – Authorized an agreement beginning on or after October 28, 2015 with Kubra Data Transfer, LTD. to provide online electronic bill presentment and payment services at an initial estimated annual cost of \$160,000 for three years with two options to renew for an additional two-year period for a total cost not to exceed \$1,500,000 for seven years including annual escalation at the lesser of Consumer Price Index or four percent.
 5. **Motion No. 180-15** – Authorized an agreement beginning on or after October 27, 2015 with McKim Design Group in an amount not to exceed \$292,470 for design and construction management support services for elevator upgrades at the Administration Building during the period October 2015 to October 2018.
 6. **Motion No. 181-15** – Authorized two Power Purchase Agreements with SunEdison that provide for the purchase of up to 680 kilowatts of photovoltaic generated electricity at the Camanche Dam and the North Richmond Water Reclamation Plant at a fixed purchase price of \$0.092 per kilowatt hours (kWh) and \$0.093/kWh respectively. The agreements have an initial term of 15 years with two five-year options to renew for up to an additional 10 years.
 7. **Motion No. 182-15** – Authorized an agreement with American Tower L.P., a Delaware limited partnership for a master communications sites lease for 10 years with two 5-year renewal option periods at an initial rent of \$400,000 per year.
 - 8.1. **Motion No. 183-15** – Awarded a contract to the lowest responsive/responsible bidder Myers Power Products, Inc. in the total amount, after the addition of taxes, not to exceed \$806,629 for supplying one prefabricated power building, including electrical equipment and related services for the Orinda Water Treatment Plant under Request for Quotation No. 1528.
 - 8.2. **Motion No. 184-15** – Awarded a contract to the lowest responsive/responsible bidder T&T Valve and Instrument, Inc. in the total amount, after the addition of taxes, not to exceed \$105,346 for supplying one 54-inch diameter high performance valve with an actuator and related services for the Orinda Water Treatment Plant under Request for Quotation No. 1603.
- Director of Engineering and Construction Xavier presented context for the recommended actions for Items 8.1 and 8.2. Director Young asked for clarification about alternatives that could be used to accomplish the objectives at the Orinda Water Treatment Plant.
 - Motion by Director Young, seconded by Director Patterson, to approve the recommended actions for Items 8.1 and 8.2, carried (6-0) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (Coleman).

9. **Resolution No. 34057-15** – Amending Position Resolution No. 34041-15 For Fiscal Years 2016 And 2017 To Add Seven Temporary Construction Positions And One Limited Term Position.

DETERMINATION AND DISCUSSION

10. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine presented an update on the status of bills for which EBMUD sponsored or adopted a formal position during the 2015 legislative year. She reported that Governor Brown signed EBMUD sponsored legislation SB 188 (Hancock) which amends the Municipal Utility District Act to eliminate the statutory 2015 sunset date on EBMUD's authority to impose a lien on properties for delinquent water and wastewater charges and to collect those charges through county property tax rolls. The Governor also signed EBMUD position bill AB 1 (Brown) which facilitates water conservation during a governor-declared drought emergency and AB 142 (Bigelow) which designates specified portions of the Mokelumne River for study as a potential addition to the state's "wild and scenic" river system. Ms. Dumaine reported that 2,700 bills were introduced, 941 went to the Governor for review, and 808 were signed by the Governor. She also reported on state and federal leadership changes, a state pension initiative, and the water bond measure. Director Young urged staff to track any legislation planned for fire remediation work.

11. **Chabot Dam Seismic Improvement Project – Pilot Project Labor Agreement Update.**

Engineering Manager Jimi Yoloye presented a status update on the negotiations of a pilot Project Labor Agreement (PLA) for the Chabot Dam Seismic Improvement Project. In April 2015, staff completed a draft of the PLA document consistent with the Board-adopted principles, and in May 2015 staff transmitted the draft PLA to the Alameda County Building Trades Council (ACBTC). Since that time staff has held several meetings with ACBTC, but negotiations are at a stalemate. He said that of the twelve areas of disagreement, there are two areas in which negotiations are at impasse; five areas where negotiations have progressed to some extent but are unresolved; and five areas where there is tentative agreement. He noted that the ACBTC has indicated a firm position on PLA terms related to double benefit payments and use of non-union subcontractors. It was noted that negotiations were suspended on October 14.

Mr. Yoloye said that staff is uncertain whether negotiations will be successfully completed in time to incorporate a PLA into the Chabot Dam Seismic Improvement Project. He pointed out that there are two possible alternatives if negotiations are not successfully completed in time for advertisement and bidding of the project: 1) Continue negotiations and pilot the PLA on another upcoming project such as the South Reservoir Replacement estimated at \$14 million; and 2) Re-visit the idea of establishing a minimum \$25-30 million threshold for considering application of a PLA to District projects on a case-by-case basis. This is similar to the approach taken by Contra Costa Water District (CCWD), the only Northern California water agency/district to implement a PLA. The current project schedule is completing negotiations of a PLA by October 30, 2015; Board consideration and approval

of the PLA on November 10, 2015' advertising for bids on December 8, 2015; and contract award for February 9, 2016.

- Addressing the Board were the following persons: 1) Ken Kreischer, Western Water Constructors, Inc., Santa Rosa, urged the District to keep its projects free from PLAs to allow the maximum number of bidders on projects, keep costs down, eliminate the need for contractors to pay double benefits thereby increasing costs, and because they restrict contractors from bringing in their highly-skilled employees to the project; and 2) Andreas Cluver, Secretary-Treasurer, Alameda County Building Trades Council (ACBTC), Oakland, commented that the issue of the number and order of core employees and the requirement for paying into union trust funds has led to an impasse. He said ACBTC's position has been for the District to adopt the standard language that is included in all 19 sector PLAs in Alameda County and with other water agencies in the Bay Area. He said that if the Board were to give direction to staff to negotiate on ACBTC's standard language, there could be an agreement in two weeks. He noted that the impasse issue related to paying into the union trust fund reflects a profound misunderstanding of the subcontracting language and one that can be resolved. Lastly, Mr. Cluver noted that ACBTC was very disappointed by the outcome of local hire in the negotiations and he questioned the survey methodology performed by the District.

The Board asked numerous questions of staff and Mr. Cluver regarding core employees, the local hire program, the number of workers for the project, the double benefits issue, higher contract threshold, and the issue of non-union contractors. There was considerable Board discussion about the complexity of the issues presented by this pilot effort. There was consensus by the Board that staff should continue its work to come up with an agreement for this pilot effort.

- Motion by Director McIntosh, seconded by Director Patterson, to continue negotiations, carried (5-0-1-1) by the following voice vote: Ayes (Katz, Linney, McIntosh, Patterson, Young); Noes (None); Absent (Coleman); and Abstained (Mellon).

Motion No. 185-15 – Directed staff to continue negotiations on the Pilot Project Labor Agreement for the Chabot Dam Seismic Improvement Project.

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

Manager of Fishery and Wildlife Jose D. Setka reported that EBMUD staff has begun restoration activities on some areas impacted by the Butte Fire. Since none of the affected areas are owned or managed by EBMUD, these actions are limited to areas where the District has received access for the purposes of conducting restoration actions. He presented short and long-term plans to improve watershed/forest health and fire resiliency. Activities include coordinating the delivery of 4,200 linear feet of certified weed-free straw waddle rolls, purchasing 1,500 bales of certified weed-free rice straw for application and public distribution, partnering with California Conservation Corps and CalFire crews to leverage EBMUD activities in the field with additional labor, and establishing entry/work agreements with Calaveras County, Bureau of Land Management (BLM), and private landowners. Staff will continue to monitor and participate in collaborative efforts to improve watershed/forest health and fire resiliency. Director Young urged the District and the Upper Mokelumne River

Watershed Authority to undertake stewardship efforts to correct the impacts of erosion in the burn area.

President Mellon announced that the presentations on San Francisco Bay Stewardship Update on the Bay-Delta, and the 2015 Critical Drought Action Plan Update would be held over to the November 10 regular meeting.

- Addressing the Board was Henrik Albert, of Alameda, who commented on the Delta Update and said the California WaterFix alternatives have many defects. He urged the District to present objections to correct the defects related to the change of diversion and adequate fresh water flows.

REPORTS AND DIRECTOR COMMENTS

13. Committee Reports.

- Filed with the Board were the meeting Minutes of the October 13, 2015 Planning Committee and the Legislative/Human Resources Committee.

14. Other Items for Future Consideration.

15. Director Comments.

- Director Coleman reported attending/participating in the following events: ACWA Special Board of Directors meeting on October 13 in Oakland; East Bay Economic Development Alliance event on October 15 in Oakland; ACWA Best of Blue Award teleconference meeting on October 21 in Oakland; ACWA Executive Committee teleconference meeting on October 21 in Oakland; and EBMUD/Dublin San Ramon Services District Board of Directors meeting on October 26 in Dublin. He reported on plans to attend/participate in the following upcoming events: ACWA teleconference on October 27 in Oakland; Bay Area Council Dinner on October 28 in San Francisco; ACWA Executive Committee teleconference meeting on November 2; speaking engagement to SIRS on behalf of EBMUD on November 4 in Moraga; ACWA California Water Symposium on November 5 in Santa Fe Springs; and ACWA Executive Committee teleconference meeting on November 9 in Oakland.
- Director Katz had no comment.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Patterson had no comment.
- Director Young reported on her visit to the Butte fire site area.

- President Mellon announced that he would be attending the annual International Foundation of Employee Benefits Plans Conference November 8-11 and would be absent from the November 10 Board meeting. He also announced that he was married on October 25, 2015.

ADJOURNMENT

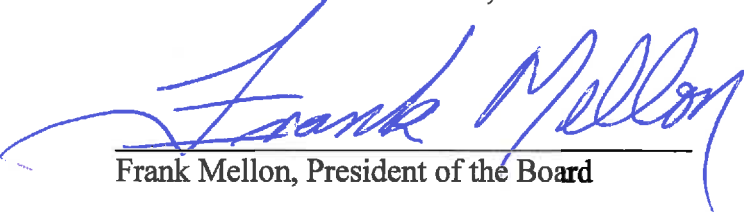
President Mellon adjourned the meeting in memory of Laura King Moon who passed away this morning after a courageous battle with cancer. Laura served as Chief Deputy Director for the Department of Water Resources since September 2013.

The meeting was adjourned at 4:20 p.m.

SUBMITTED BY:


Lynelle M. Lewis, Secretary of the District

APPROVED: November 10, 2015


Frank Mellon, President of the Board