

## **MINUTES**

**Tuesday, November 24, 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 11:05 a.m. in the Administration Center Board Room.

#### **ROLL CALL**

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Attorney Derek T. McDonald (Item 1), and Director of Water and Natural Resources Richard G. Sykes (Item 2).

#### **PUBLIC COMMENT**

There was no public comment.

#### **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 1:16 p.m. in the Administration Center Board Room.

#### **ROLL CALL**

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

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.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

The Board, in closed session this morning, by a unanimous vote of the Directors attending, authorized the General Counsel to initiate litigation in one matter. The action, defendants, and other particulars will be disclosed, upon inquiry, once the action is formally commenced.

There are no other announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board was Rosa Merced, representing the LGBTQ Pride Month Committee, who submitted a public records request for the following information: audio recordings from the October 27, 2015 and the November 24, 2015 Regular Meetings of the Board; detailed Black History Event plans for years 2013 – 2015; full detailed copy and results of the 2014 AA/EEOC discrimination complaint filed by Ms. Garza and investigated by Ms. Deborah Boutte; and a copy of the full report provided to the Board of Directors pertaining to the LGBTQ Pride Month Committee's charge of discrimination voiced during public comment at the October 27, 2015 Board meeting.

## **CONSENT CALENDAR**

- Items 10 and 11 were pulled from the Consent Calendar for discussion.
  - Motion by Director McIntosh, seconded by Director Coleman, to approve the recommended actions for Items 1-9 on the Consent Calendar, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Mellon); NOES (None); ABSTAIN (None); ABSENT (Young).
1. **Motion No. 191-15** – Approved the Regular Meeting Minutes of November 10, 2015.
  2. The following correspondence was filed with the Board: 1) Memorandum dated November 24, 2015 to Lynelle Lewis, Secretary of the District, from LGBTQ Pride Month Committee Chairs, Rachel Garza, Rene Anglo, and Rosa Merced, regarding Submission of a Public Information Request; 2) Presentation entitled “Proposed Implementation of Traditional Commercial Paper Program,” dated November 24, 2015; 3) Presentation entitled “Amendment to EBMUD Retirement System Ordinance (No. 40) – Section 7 First Reading,” dated November 24, 2015; and 4) Presentation entitled “Butte Fire Response,” dated November 24, 2015.

3. **Motion No. 192-15** – Awarded a contract to the lowest responsive/responsible bidder, Hallsten Corporation, in an amount, after the addition of taxes, not to exceed \$196,593, for supplying a fully functional dock system to the District under Request for Quotation No. 1604A.
4. **Motion No. 193-15** – Awarded a contract to the lowest responsive/responsible bidder, Stat Delivery Service, Inc. in the estimated annual amount of \$39,600 for supplying courier services during the two-year period, beginning on or after December 1, 2015, with three options to renew for an additional one-year period for a total amount not to exceed \$198,000 under Request for Quotation No. 1605.
5. **Motion No. 194-15** – Authorized a cost sharing agreement beginning on or after November 24, 2015, with the City of Orinda for Phase II of the North Lane Storm Water Mitigation Project. The cost sharing agreement states that City of Orinda and EBMUD will evenly divide the 25 percent local match share (or 12.5 percent each) of the construction costs up to \$365,000 each.
6. **Motion No. 195-15** – Considered the June 2015 and November 2015 Addenda to the Main Wastewater Treatment Plant (MWWTP) Land Use Master Plan Environmental Impact Report, determined that no further environmental review is required under the California Environmental Quality Act, and authorized an amendment to the existing preliminary engineering services agreement with Harvest Power Tulare, LLC to increase the agreement value by \$596,879 to \$857,879 for the provision of preliminary engineering design services for food waste preprocessing facilities at the MWWTP.
7. **Motion No. 196-15** – Cancelled the December 22, 2015 Closed Session and Regular Meetings of the Board of Directors.
8. **Resolution No. 34058-15** – Authorizing Designation Of Agents To State Office Of Emergency Services For Disaster Reimbursement.
9. **Resolution No. 34059-15** – Adopting Revised Policy 3.01, Annexations; Revised Policy 3.02, California Environmental Quality Act Implementation; And Revised Policy 7.01, Aqueduct Integrity and Rights-of-Way Maintenance.
10. **Resolution No. 34060-15** – Appointing Sophia D. Skoda As Director Of Finance (effective November 30, 2015).

President Mellon pulled Item 10 from the Consent Calendar to make comments.

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

Ms. Skoda said she was honored to be selected to serve in this position and looks forward to working with the Finance team in this capacity.

11. **Resolution No. 34061-15**– Appointing Xanthe M. Berry To The Position Of Assistant General Counsel (effective December 14, 2015).

President Mellon pulled Item 11 from the Consent Calendar to make comments.

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

Ms. Berry said she was very excited about this promotion and taking on this responsibility. She thanked all the people she has worked with over the past 20 years.

#### **DETERMINATION AND DISCUSSION**

12. **Authorize and Approve the Issuance of Commercial Paper Notes and Related Bank Notes; Approve the Form, and Authorize the Execution, of Certain Documents in Connection with the Issuance, Securing and Sale of Such Commercial Paper Notes and Bank Notes, and Approve Certain Actions Related Thereto.**

Principal Management Analyst Dari Barzel presented a proposal to replace the Water System's Extendable Commercial Paper (ECP) with traditional Commercial Paper (CP). She said that recent rating agency guidance to ECP investors has noted increased risk of this form of borrowing, especially for the Water System given the large size of its ECP portfolio. Ms. Barzel presented the pros and cons of ECP and CP for the District. While less expensive than traditional CP, the ECP market is heavily dependent upon a small number of investors. Should one or more of these investors choose to leave the market as a result of recent developments, interest rates could rise substantially and, in the worst case, the District would have to refund its outstanding ECP on very short notice. This risk is manageable for the Wastewater System, whose liquidity is substantial relative to its \$15 million ECP outstanding. However, the Water System's \$360 million outstanding poses a material risk to the District's liquidity and debt service budget, and is more sensitive to drought than the Wastewater System. Accordingly, staff is recommending replacing its Water System ECP program with traditional CP. Director Coleman asked if this transaction will have any impact on the Water System rates. General Manager Coate said that the actions will not impact rates as the costs have already been included in the budget in anticipation of this action.

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

**Resolution No. 34062-15** – Authorize And Approve The Issuance Of Commercial Paper Notes (Water Series) And Commercial Paper Notes (Wastewater Series) And Related Bank Notes; Approve The Form, And Authorize The Execution, Of Certain Documents In Connection With The Issuance, Securing And Sale Of Such Commercial Paper Notes And Bank Notes; And Approve Certain Actions Relating Thereto.

Director Coleman asked about the District's efforts to protect the Main Wastewater Treatment Plant assets against the vulnerability of sea level rise due to climate change. General Manager Coate said that the District provided information to the Bay Conservation and Development Commission a couple years ago, and staff will provide that information to the Board.

**13. Introduction and First Reading of an Ordinance Amending the East Bay Municipal Utility District Employees' Retirement System Ordinance (Ordinance No. 40) to Update Section 7 in Accordance with Guidance from the Internal Revenue Service.**

Senior Human Resources Analyst Elizabeth E. Grasseti presented the proposed Ordinance amendment. She said that Section 7(b) of the Retirement Ordinance entitled "Allowance for Service" is being updated to include requirements that arise from the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"), which provided, in part, that when a plan member dies while performing qualified military service, the plan must allow the beneficiaries of the member to be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the plan had the participant resumed employment and then terminated employment on account of death. At the May 21, 2015 meeting of the Retirement Board, the Board unanimously authorized counsel to seek renewal of the IRS's favorable determination that the plan constituting the EBMUD Retirement Ordinance continues to be a tax-qualified plan. Based on tax counsel's review of the criteria under which the IRS will review the plan, a further amendment to the Retirement Ordinance is required and the Retirement Board has authorized staff to bring this amendment to the EBMUD Board of Directors.

The Ordinance amending the Retirement Ordinance, Section 7, to update the language related to member contribution rates will take effect 30 days after its passage by the Board of Directors. Two readings of the Ordinance are required. The first reading is taking place at the meeting of the Board of Directors on November 24, 2015 and the second reading will occur at the meeting of the Board of Directors on December 8, 2015. After the second reading, the Municipal Utility District Act requires that the amendments be published once a week for two successive weeks in a newspaper of general circulation published in the District.

**Ordinance No. 366-15 – An Ordinance Amending Section 7 Of Ordinance No. 40, Which Is The Employees' Retirement System Ordinance (*Introduction and First Reading*).**

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

Manager of Fishery & Wildlife Jose D. Setka presented an update on the Butte Fire response. He reported that work on the erosion/stability issues on Ponderosa Road has been completed and that staff would be focusing its efforts on the watershed area. The last volunteer day was very successful and EBMUD will continue to provide assistance to the community over the next few months. Staff is also continuing to sample water at Pardee Reservoir and to date, no significant water quality issues have been identified.

Next, he reported that the Bureau of Land Management (BLM) was approved for Erosion Stability Report funding for mitigation work. They will be treating approximately 140 acres in the Mokelumne Watershed by aerially spraying wood shreds on the higher slopes. As part of those efforts, EBMUD has discussed purchasing seed to add to the mix of wood shreds to help the soil and it appears that BLM will be amenable. This work is tentatively set for January. Calaveras County has received tentative approval for FEMA grant funding for remediation work and EBMUD has volunteered expertise and staff resources. Mr. Setka pointed out that there is a lot of discussion regarding fuel and forestry management practices in the watershed and EBMUD is part of the collaborative effort to assist with legislative efforts. Director Coleman asked staff to investigate laws regarding export of wood from the burn area. In concluding, he reported that upcoming volunteer events are scheduled for December 5 and 19. President Mellon reminded staff to notify the Board a week in advance of the watershed restoration volunteer events.

## **REPORTS AND DIRECTOR COMMENTS**

### **15. Committee Reports.**

- Filed with the Board were the meeting Minutes of the November 10, 2015 Planning and Legislative/Human Resources Committees.

### **16. Other Items for Future Consideration.**

None.

### **17. Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA Article X Amendment Board Advisory Committee webinar on November 16 in Oakland; ACWA Executive Committee teleconference meeting on November 16 in Oakland; ACWA Executive Director evaluation on November 19 in Sacramento; ACWA Chair and Vice-Chair orientation on November 19 in Sacramento; ACWA/EBMUD MWH reception on November 19 in Sacramento; ACWA dinner on November 19 in Sacramento; ACWA Executive Committee meeting on November 20 in Sacramento; ACWA Board of Directors on November 20 in Sacramento; and ACWA Scripts meeting for conference on November 20 in Sacramento. He reported on plans to attend/participate in the following upcoming events: EBMUD-ACWA/JPIA Board Meeting November 30 in Palm Desert; EBMUD-ACWA/JPIA Conference December 1-4 in Palm Desert; ACWA Executive Committee teleconference meeting on December 7 in Oakland; and EBMUD/UMRWA Executive Committee teleconference meeting on December 8 in Oakland.
- Director Katz had no comment.
- Director Linney had no comment.
- Director McIntosh reported attending the Council of Industries meeting on November 18 and Ward 1 luncheon event on November 19 in Richmond.

- Director Patterson had no comment.
- Director Young had no comment.
- President Mellon reported attending/participating in the following events: Bishop Ranch Executive Forum on November 12 in San Ramon; Alameda County Special Districts Mosquito District meeting on November 18 in San Leandro; and EBMUD Retirement Board meeting on November 19.

### **ADJOURNMENT**


President Mellon adjourned the meeting in memory of former Alameda County Supervisor Mary V. King who passed away on November 15, 2015.

The meeting was adjourned at 1:58 p.m.

SUBMITTED BY:

  
Lynelle M. Lewis, Secretary of the District

APPROVED: December 8, 2015

  
Frank Mellon, President of the Board

