

## MINUTES

**Tuesday, November 8, 2022**  
**East Bay Municipal Utility District**  
**Board of Directors**  
***\*Virtual\****

### Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 a.m. and announced in accordance with Government Code section 54953(e), this meeting was being conducted by webinar and teleconference only. A physical location was not provided for this meeting.

### ROLL CALL

Directors John A. Coleman, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Andy Katz arrived at 11:11 a.m.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Interim Director of Wastewater Donald M. Gray (Item 1a), Assistant General Counsel Lourdes M. Matthew (Item 1b), Director of Customer and Community Services Andrew L. Lee (Item 1b), Attorney Felicity Grisham (Item 1c), Attorney Ruby Acevedo (Item 2), and Director of Human Resources Cindy R. Charan (Item 2).

### PUBLIC COMMENT

- Addressing the Board were the following: 1) Joe Pangelinan, Chief Steward, AFSCME Local 444 commented on harassment and retaliation experienced by a Local 444 Shop Steward; George Cleveland, Chief Steward, AFSCME Local 2019 commented on a supervisor's disparate treatment of a Local 2019 member and suggested discipline for the supervisor; and 3) Ivette Rivera commented on comments made to her by her supervisor, the *Shaunte Scott v. East Bay Municipal Utility District* case trial date, and leadership accountability for District management.

President Linney requested additional information on the matter discussed by Joe Pangelinan.

### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and the Board convened to the Administration Building Training Resource Center for discussion.

### Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. and announced in accordance with Government Code section 54953(e), this meeting was being conducted by webinar and teleconference only. A physical location was not provided for this meeting.

## **ROLL CALL**

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

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

## **BOARD OF DIRECTORS**

President Linney 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) Laurice Brown, Executive Board member, AFSCME Local 2019 commented on disparate treatment experienced by a Local 2019 member; and 2) Ivette Rivera commented on comments made to her by her supervisor, the *Shaunte Scott v. East Bay Municipal Utility District* case trial date, and leadership accountability for District management.

## **CONSENT CALENDAR**

- Item 10 was pulled from the Consent Calendar for separate discussion.
  - Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Items 1-9 on the Consent Calendar carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 201-22** – Approved the Regular Meeting minutes of October 25, 2022.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Drought Update,” dated November 8, 2022; **2)** Presentation entitled, “Resolution Continuing Virtual Meetings of the Board,” dated November 8, 2022; **3)** Speakers’ Bureau and CY 2023 Record; and **4)** Revised Draft Resolution Commending Ward 7 Director Frank Mellon And Acknowledging His Service To The East Bay Municipal Utility District.
  - 3a- **Motion No. 202-22** – Authorized direct award contracts with the following vendors for  
3b. supplying aftermarket (also known as non-Original Equipment Manufacturer) automotive, truck, and equipment parts beginning on or after November 8, 2022 for three years with two options to renew for additional one-year periods in an aggregate amount, after the addition of taxes, including option years, not to exceed \$2,000,000: Advance Auto Parts; AutoZone Parts, Inc.; B & C Truck Parts, Inc.; City Auto Supply; Clutch & Brake Xchange; Contra Costa Auto Parts, Inc.; Dentoni’s Welding Works, Inc.; Delta Truck Center; Eastburn LLC dba Calaveras Auto Supply; Fleetpride, Inc.; Kent Automotive; Monument Car Parts; NAPA Auto Parts;

NAPA Heavy Vehicle Parts Group; Royal Brass, Inc.; S.T.M. Automotive dba S.P. Automotive; and Stommel, Inc. dba LEHR; and authorized additional contracts for supplying aftermarket automotive, truck, and equipment parts, on an as needed basis and subject to the aggregate amount authorized by the Board for such supplies on November 8, 2022, with vendors that meet District standards and offer pricing at or below the range in the proposed contracts with the vendors above to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.

- 4a- **Motion No. 203-22** – Authorized direct award contracts with the following vendors for supplying  
4b. Original Equipment Manufacturer parts for fleet vehicles and equipment, beginning on or after November 8, 2022 for three years, with two options to renew for additional one-year periods in an aggregate amount, after the addition of taxes, including option years, not to exceed \$3,200,000: Big Valley Ford, Inc.; Future Ford of Concord, LLC; Garton Tractor, Inc.; Golden Gate Truck Company; Hilltop Ford; Infinite Velocity Automotive, Inc. dba FH Dailey Chevrolet; Mission Valley Ford Truck Sales; Municipal Maintenance Equipment, Inc.; Nixon-Egli Equipment Co. of Southern California, Inc.; Owen Equipment Sales; Pape Machinery, Inc.; Peterson Trucks, Inc.; Ron DuPratt Ford, Inc.; TEC of California; Unlimited Tool Repair & Fabrication, Inc.; and Walnut Creek Ford; and authorized additional contracts for supplying Original Equipment Manufacturer parts for fleet vehicles and equipment, on an as needed basis and subject to the total aggregate amount authorized by the Board for such supplies on November 8, 2022, with vendors that meet District standards and offer pricing at or below the range in the proposed contracts with the above vendors to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.
5. **Motion No. 204-22** – Authorized an agreement beginning on or after November 8, 2022 with Cisco Air Systems, Inc. for three years, with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$1,851,842 for compressor overhaul, repair, and upgrade services.
6. **Motion No. 205-22** – Authorized an agreement beginning on or after November 8, 2022 with Sequoia Ecological Consulting, Inc. in an amount not to exceed \$2,000,000 for as-needed environmental services to support capital improvement projects.
7. **Motion No. 206-22** – Authorized an agreement beginning on or after November 8, 2022 with Schneider Electric Systems USA, Inc. for three years for a total amount not to exceed \$559,985 for maintenance, support, and upgrades to the District's Supervisory Control and Data Acquisition System services at District facilities.
8. **Motion No. 207-22** – Authorized grazing lease agreements with a term beginning on or after October 1, 2022 with lessees Hoover Cattle Company, LLC, Jim Mohring, Alberta Nunes, Redwood Rangers, Moraga Horsemen's Association, Orinda Horsemen's Association, Inc., and Five Dot Land & Cattle Company for a five-year period with an option to renew for an additional five-year period for livestock grazing on District East Bay watershed lands.
9. **Motion No. 208-22** – Authorized an amendment to the Power Purchase Agreement previously authorized under Board Motion No. 009-22 with Solar Star Bear Creek, LLC to increase the energy purchase price by 8.8 percent from \$0.0616 to \$0.0670 per kilowatt hour, to account for increased material and construction costs and ensure timely project completion.

10. **Authorize the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett, LLP, for specialized legal services related to construction, public contracts and procurement, intellectual property and technology matters, tax law, public pension law, labor and employment, and litigation matters in an additional amount not to exceed \$500,000.**

Director Coleman recused himself from voting on Item 10 due to a potential conflict of interest related to his ongoing litigation matter with the District.

- Motion by Director Young, seconded by Director McIntosh to approve the recommended actions for Item 10 carried (6-0) by the following roll call vote: AYES (Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 209-22** – Authorized the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett, LLP, for specialized legal services related to construction, public contracts and procurement, intellectual property and technology matters, tax law, public pension law, labor and employment, and litigation matters in an additional amount not to exceed \$500,000.

#### **DETERMINATION AND DISCUSSION**

11. **Adopt a resolution commending Director Frank Mellon and acknowledging his public service achievements.**

President Linney highlighted Director Mellon's 28 years of service and contributions while representing District Ward 7 which includes Castro Valley, the communities of Cherryland and Fairview, and portions of Hayward, San Leandro, and San Ramon. The Board will present Director Mellon with an engraved copy of the resolution at the December 13, 2022 meeting. Director Mellon thanked the Board for their recognition.

- Addressing the Board was Ivette Rivera who commented it may be unlawful for the Board to vote on a lawsuit that is in place right now with a fellow Board member.
- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 11 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35321-22** – Commending Ward 7 Director Frank Mellon And Acknowledging His Service To The East Bay Municipal Utility District.

12. **Make requisite findings and adopt a Resolution to continue to hold meetings of the Board of Directors (Board) via teleconference under Government Code section 54953(e) until the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.**

Director of Operations and Maintenance David A. Briggs reviewed COVID-19 positive cases in Alameda and Contra Costa counties and the number of employee positive COVID-19 cases (1,011) to date. While there have been no changes to isolation and quarantine requirements in the health code and regulations, requirements for the following state laws and policy have been extended: workers' compensation presumption for COVID, paid COVID leave, and COVID exposure notifications.

All District safety protocols remain in effect and at this time, indoor masking is still required. Staff continues monitoring conditions and is tentatively scheduled to seek Board authority to rescind the District's COVID-19 emergency declaration at the December 13, 2022 Regular meeting. If the emergency declaration is rescinded, in January 2023, District facilities will begin re-opening to the public; qualifying staff will begin transitioning from emergency to permanent work from home schedules; and the indoor masking requirement will be rescinded. Contact tracing will continue as required by the state. He reviewed Section 54953(e) of the Ralph M. Brown Act and said the Board is being asked to consider adopting the resolution to continue providing flexibility for conducting Board meetings. Mr. Briggs responded to Board questions on how at home COVID-19 tests factor into the data for county cases; how the District will address potential issues with staff commenting on other staff wearing masks after the indoor masking requirement is rescinded; guidance that will be used to re-open facilities to the public; and triggers that could postpone the plan to re-open facilities, transition staff from emergency to permanent work from home schedules, and rescind the indoor masking requirement. The Board requested additional information on changes and limitations to the indoor masking guidelines; the authority in the District's COVID-19 emergency declaration; and specific guidelines for the public to enter District facilities.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Item 12 carried (6-1) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, and Linney); NOES (Young); ABSTAIN (None); ABSENT (None).

**Resolution No. 35322-22** – Authorizing Continued Utilization Of Teleconferencing For Meetings Of The East Bay Municipal Utility District Board Of Directors.

13. **Adopt the Resolution Condemning Human Rights Violations Against Iranian Women and the People of Iran.**

Special Assistant to the General Manager Derry L. Moten said the Board is being asked to adopt a resolution to renounce the recent and historic human rights violations of the Islamic Republic of Iran toward the people of Iran as exemplified by the killing of Mahsa (Zhin) Amini on September 13, 2022 and in accordance with the United Nations Universal Declaration of Human Rights. The resolution was developed based on interviews with District employees of Iranian heritage and appropriate staff as subject matter experts. President Linney commented Joey Smith, President of AFSCME Local 2019 requested the Board consider adopting a resolution and as stated by Mr. Moten, the resolution was prepared and presented to the Board by staff. Director McIntosh commented that during her tenure on the Board, previous requests for similar resolutions were not granted. She requested a resolution condemning human rights violations against the women, children, and people of Africa be prepared for Board consideration at a future meeting.

- Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 13 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35323-22** – Condemning Human Rights Violations Against Iranian Women And The People Of Iran.

**14. Discuss Board of Directors Officer Nomination and Election Process.**

President Linney opened the discussion regarding the Board's current practice of nominating and electing the same two members to serve as President and Vice President for two consecutive terms. In April 1982, the Board voted to elect the President and Vice President during the first Regular Board meeting each January. Although the Board voted to conduct elections for President and Vice President on an annual basis, the Board did not specify that elected members could only serve one term. There was considerable Board discussion regarding the nomination and election process and the practice of Board members serving as President and Vice President for two consecutive terms. After additional discussion, there was consensus by the Board to calendar this topic for discussion in February 2023. The Board requested a list of Board members that have served as President and/or Vice President during the last ten years and information on the rotation policy or practices for Board President and Vice President at other agencies.

**15. General Manager Report.**

2022 Drought Update: District operations; Water Shortage Emergency Action Plan implementation including messaging and outreach, water conservation drought programs, conservation savings, and the Excessive Water Use Penalty Ordinance; and media

Director of Operations and Maintenance David A. Briggs provided a water supply update and reported current total storage in Pardee and Camanche reservoirs is 90 percent of average and 63 percent of capacity, and total storage in the East Bay reservoirs is 113 percent of average and 84 percent of capacity. The end of season storage on September 30, 2022 was 520 thousand acre-feet (TAF). On October 24, the District completed the delivery of 20 TAF of water purchased from the Placer County Water Agency and the Freeport facilities were shut down. A gainshare obligation of 12 TAF was released in October 2022 to benefit fisheries on the Mokelumne River. Manager of Water Conservation Alice E. Towey provided an overview of the District's outreach and messaging efforts, and advertising campaign since the Board declared the Stage 2 drought emergency in April 2022. She highlighted photos and read testimonials from customers that participated in the District's "I Heart My Garden" challenge, discussed outreach efforts specific to commercial and institutional customers and cities, and reported on conservation savings achieved between May 2022 and October 2022. Staff continues administering the District's Excessive Water Use Penalty Ordinance and through September 30, 2022, a total of 323 customers have received violations. These customers did not submit an appeal within the 15-day appeal period and the District is required to release their names, addresses, and consumption information under the California Public Records Act. The customer notification process included courtesy notices and warning letters before violation, and through October, 2,713 customers have received warning letters. Per a request from the Board, staff has analyzed the effectiveness of the District's warning letters to encourage customers to reduce their water use and will continue analyzing this information as more data becomes available. Senior Public Information Representative Andrea A. Pook reported on media activities noting the focus of media coverage has shifted from drought to the status of the District's water supply. She reviewed next steps which are to continue planning for additional water transfers if 2023 is dry; transitioning to winter drought messaging; monitoring customers subject to the excessive water use penalty; and revisiting the District's overall conservation goal in spring 2023. In response to a Board inquiry, Ms. Towey confirmed customer questions regarding their individual conservation efforts should be sent to her office. The Board asked staff to reach out to service area schools regarding conservation efforts; add hyperlinks to the Water Wednesday webinars on ebmud.com; and include water consumption and conservation information from 2013, 2020 and 2022 in the next update.

General Manager's Monthly Report

General Manager Clifford C. Chan announced he was available to respond to questions regarding the October 2022 Monthly Report. Director Coleman asked why entries regarding Board member activities do not list Board members by name. Mr. Chan said staff would review the report preparation process and provide an update.

**REPORTS AND DIRECTOR COMMENTS**

**16. Committee Reports.**

- Filed with the Board were the Minutes for the October 25, 2022 Sustainability/Energy and Finance/Administration Committees.
- Planning Committee chair Marguerite Young reported the Committee met earlier in the day and received updates on the Local Hazard Mitigation Plan; Wet Weather; and Paving and Other Related Services.
- Legislative/Human Resources Committee chair Lesa R. McIntosh reported the Committee met earlier in the day and received an update on the Diversity, Equity, and Inclusion Strategic Plan.

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

None.

**18. Director Comments.**

Director Coleman reported participating in the EBMUD/Central Contra Costa Sanitary District Water Forum in Lafayette on October 26 and the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on October 27. He reported on plans to participate in the Los Vaqueros Reservoir JPA Board meeting (remote) on November 9; Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on November 16; ACWA Fall Conference in Indian Wells on November 29 through December 1; Los Vaqueros Reservoir JPA Board meeting (remote) on December 14; EBMUD Developer Forum in Oakland on December 15; and the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on December 22.

- Directors Katz, McIntosh, Mellon, Patterson, Young and President Linney had no reports.

**ADJOURNMENT**

President Linney announced that in recognition of Veteran's Day, which will be observed on November 11, the District is recognizing and honoring employees and Board members who have self-identified to the District as having served in the U.S. military. The Board stood by as the names of these employees and Board members were displayed onscreen.

President Linney adjourned the meeting at 2:48 p.m.

SUBMITTED BY:

  
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Rischa S. Cole, Secretary of the District

APPROVED: November 22, 2022

  
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Doug A. Linney, President of the Board