

MINUTES

**Tuesday, March 28, 2023
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California**

Regular Closed Session Meeting

President Andy Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:37 a.m. in the Administration Building Training Resource Center.

ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Manager of Risk Management Vladimir Bessarabov (Items 1a and 1b), Assistant General Counsel Jon Salmon (Item 2), Attorney George Croton (Item 2), and Director of Wastewater Amit K. Mutsuddy (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Lonna Coleman commented on community property, being a designated beneficiary of EBMUD retirement benefits and reciprocity for EBMUD retirement benefits; and 2) Ivette Rivera commented on the Institute for Local Government's publication "Walking the Line," a letter to the Board requesting a response to comments by Director Katz, the Pierce/Bland court case, a petition by Frank Mellon, and California Penal Code section 424.
- Director Coleman left the meeting at 11:38 a.m. and returned at 11:44 a.m.
- Director Chan left the meeting at 11:44 a.m. and returned at 11:45 a.m.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:16 pm. in the Administration Building Training Resource Center.

ROLL CALL

Directors April Chan, John A. Coleman, Doug A. Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Andy Katz 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 Katz 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) Lonna Coleman commented on community property, being a designated beneficiary of EBMUD retirement benefits and reciprocity for EBMUD retirement benefits; and 2) Ivette Rivera commented on the Institute for Local Government's publication "Walking the Line," Lonna Coleman's comments, copies of documents provided to the Board during the Closed Session meeting public comment period, the Pierce/Bland case, and Penal Code section 424.
- Director Coleman left the meeting at 1:18 p.m. and returned at 1:23 p.m.

CONSENT CALENDAR

- Item 6 was pulled from the Consent Calendar for separate discussion.
 - Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Items 1-5 and 7-10 on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 047-23** – Approved the Regular Meeting Minutes of January 10, 2023 and March 14, 2023.

President Katz announced the Board received a revised copy of the draft minutes for March 14, 2023 at their places. The revised minutes included an additional item filed under Agenda Item 2. Director Patterson asked that the minutes be revised to reflect March 11, 2023 as the date he attended the NAACP general membership meeting. Director McIntosh abstained from approving the Regular Meeting Minutes for March 14, 2023 as she was not present at that meeting.

2. The following correspondence was filed with the Board: 1) Presentation entitled, "Water Supply Update," dated March 28, 2023; 2) Presentation entitled, "Drought Update," dated March 28, 2023; 3) Speakers' Bureau and Outreach Record CY23 dated March 27, 2023; 4) Revised March 14, 2023 Regular Meeting Minutes; 5) Presentation entitled, "Adopt the Actuarial Valuations of the Retirement System and Set the FY 2024 Retirement System Contribution Rates," dated March 28, 2023; 6) Written comments (undated) from Lonna Coleman for the Closed Session Public Comment March 28 2023 for EBMUD records; 7) Written comments (undated) from Lonna Coleman for the Regular Public Comment March 28 2023 actually read; 8); Denial for Joint Stipulation and [Proposed] Order to Continue Trial and Pre-Trial Deadlines Case 3:21-cv-04325-AGT Document 133 filed 03/20/23;

9) Document dated June 26, 2013 entitled, "AFSCME, Local 444 Endorses Andy Katz for State Assembly Seat"; 10) Document entitled, "State of California Penal Code section 424"; 11) Plaintiffs' Notice of Errata Re ECF #130 Case 3:21-cv-04325-AGT Document 134 filed 03/20/23; 12) Institute for Local Government's Publication entitled, "Walking the Line: What to do When You Suspect an Ethics Problem"; 13) Document entitled, "Goodman v. Lukens Steel Co." and 14) Memo dated March 28, 2023 to Board of Directors from Special Assistant to the General Manager Kelly A. Zito regarding List of Customers in Violation of Excessive Water Use Penalty Ordinance.

3. **Motion No. 048-23** – Awarded a contract to the lowest responsive/responsible bidder, Core and Main Company, for supplying polymeric concrete vault boxes, meter boxes, and covers for three years, beginning on or after April 10, 2023 with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$4,942,670 under Request for Quotation No. 2307.
4. **Motion No. 049-23** – Awarded contracts to Northstar Chemical, Hill Brothers Chemical Company, and Univar Solutions USA Inc., for supplying mini-bulk wastewater treatment chemicals for the Richmond Advanced Recycling Expansion Water Treatment Plant and the East Bayshore Recycled Water Facility beginning on or after March 28, 2023 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 \$4,202,170 under Request for Quotation No. 2308.
5. **Motion No. 050-23** – Awarded a contract to the lowest responsive/responsible bidder, NuSpective, Inc., for supplying hardware and software licensing, maintenance and support renewal for the existing District firewall infrastructure for three years, beginning on or after March 28, 2023, for a total cost, after the addition of taxes, not to exceed \$650,000.
6. **Authorize a two-year option agreement with Champion Outdoor Ventures, LLC, for a potential 25-year lease to develop, install, and operate an electronic billboard on a portion of the District's Oakport property in Oakland, California.**

Director Coleman asked if the District gets to select the times for its billboard advertisements and for clarification on the requirement in the option agreement for the District to reimburse Champion for permitting costs up to, but not to exceed \$50,000 if the District elects not to move forward with a ground lease. Director of Customer and Community Services Andrew L. Lee provided clarification on the reimbursement requirements and confirmed the District would be able to select the times for its billboard advertisements.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 6 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 055-23 – Authorized a two-year option agreement with Champion Outdoor Ventures, LLC, for a potential 25-year lease to develop, install, and operate an electronic billboard on a portion of the District's Oakport property in Oakland, California.

- 7a- **Motion No. 051-23** – Authorized amendments to the agreements previously authorized
- 7b. under Board Motion No. 198-22, with AIMS/PVIC CA, LLC dba AIMS Companies, Badger Daylighting Corp., Bradley Tanks, Inc., Hydro-X Services, Inc., Pipe and Plant Solutions, Inc., and Presidio Systems, Inc. to increase the aggregate amount of those agreements by \$400,000 to a total

aggregate amount not to exceed \$1,880,000 for hydro/air-vacuum excavation services through October 26, 2023; and authorized additional agreements for hydro/air-vacuum excavation services, on an as needed basis and subject to the total aggregate amended amount authorized by the Board for such services on March 28, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.

8. **Motion No. 052-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 118-22, with Wiss, Janney, Elstner Associates, Inc. to increase the agreement amount by \$70,000 to a total amount not to exceed \$230,000 for structural design services during construction for the Digester Upgrade Phase 3 Project under SD-356.
9. **Motion No. 053-23** – Approved the Third Amended Upper Mokelumne River Watershed Authority (UMRWA) Joint Exercise of Powers Agreement for UMRWA's continued implementation of regional watershed restoration and protection projects for protection of source water quality, wildfire fuels management, forest restoration, long-term ecosystem health, and climate change resilience.
10. **Motion No. 054-23** – Approved the February 2023 Monthly Investment Transactions Report.

DETERMINATION AND DISCUSSION

11. **Adopt a resolution opposing Initiative 21-0042A1 – Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment.**

Manager of Legislative Affairs Kathy Viatella reviewed Initiative 21-0042A1, which if approved as written, would change the rules for how state and local governments can impose taxes, fees, assessments, and property-related charges in three primary ways: 1) amend the State Constitution to expand the definition of taxes; 2) require voter approval for legislatively proposed state tax increases; and 3) establish new requirements for imposing taxes and fees. This item has qualified as a voter initiative and will be on the November 2024 general election ballot. Staff presented this item to the Legislative/Human Resources Committee on March 14. The Committee supported the staff recommendation to oppose the measure and at its Regular meeting on March 14, the Board voted to oppose the measure and for staff to present a resolution for the Board to consider formally expressing opposition to the initiative. Ms. Viatella and General Counsel Derek T. McDonald responded to questions from the Board regarding potential costs the District would have to pay for elections if the initiative passes and if the District would have to consider each of its fees as a separate tax to be put to vote.

- Motion by Director Coleman, seconded by Director Chan, to approve the recommended actions for Item 11 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35340-23 – Resolution Opposing Initiative 21-0042A1 – “Limits Ability Of Voters And State And Local Governments To Raise Revenues For Government Services. Initiative Constitutional Amendment.”

12. **Adopt the Actuarial Valuations of the Employees' Retirement System as of June 30, 2022 prepared by the Retirement System's actuary. In addition, set Retirement System Contribution Rates for Fiscal Year 2024 (FY 2024) based on the actuarially determined contribution rates in the valuations.**

General Manager Clifford C. Chan announced the Finance/Administration Committee met earlier in the day and voted to unanimously support the staff recommendations. Treasury Manager Robert L. Hannay provided the presentation. In January 2023, the Retirement System worked with its actuary to make several changes to its actuarial economic assumptions. These included lowering the inflation assumption from 2.75 percent to 2.50 percent, lowering the investment return assumption from 7.00 percent to 6.75 percent, and reducing the inflationary salary increase assumption. These changes were implemented in the FY 2022 valuation reports. Proposed FY 2024 employer contribution rates are based on FY 2022 valuations and are higher due largely to changes in assumptions, higher-than-assumed salary increases and investment losses. Changes in the valuation value of the combined pension and Health Insurance Benefit (HIB) assets caused an increase from \$2.10 billion in FY 2021 to \$2.22 billion in FY 2022. Actuarially determined employer contribution rates for FY 2024 are up 1.32 percent to 48.48 percent of covered payroll for 1955/1980 Plan members and up 1.37 percent to 39.21 percent of covered payroll for 2013 Plan members. The Retirement Board recommended adopting these rates at its March 9, 2023 meeting. The employee contribution rates remain unchanged for FY 2024. The Board is being asked to adopt a resolution to accept the actuarial valuations as of June 30, 2022 and to set Retirement System contribution rates for FY 2024 based on the actuarially determined contribution rates in the valuations.

- Motion by Director Patterson, seconded by Director Young, to approve the recommended actions for Item 12 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35341-23 – Adopting The Actuarial Valuations Of The East Bay Municipal Utility District Employees' Retirement System And Setting The Pension And Health Insurance Benefit Employer Contribution Rates For Fiscal Year 2024.

13. **General Manager's Report.**

Water Supply Update.

Director of Operations and Maintenance David A. Briggs provided an update on the District's gross water production and the following items through March 23: Mokelumne precipitation (66.74" or 170% of average) and East Bay precipitation (34.49" or 15% of average); Caples Lake snow depth which is being estimated since the snow gauge is buried; total system storage in the District's reservoirs (688,960 acre-feet); the change and comparison in snow water equivalents in the State's water supply; current versus average storage in the State's reservoirs; the U.S. drought status; water supply projections for Rainfall Year 2023; and the District's projected 2023 total system storage at the end of Water Year 2023. Mr. Briggs responded to questions from the Board regarding the ability to generate electricity at local reservoirs and how long flood control water will be released from the Upper San Leandro Reservoir.

Drought Update.

Director of Water and Natural Resources Michael T. Tognolini reviewed provisions of the Governor's Executive Order N-5-23 which rescinded portions of several prior drought related Executive Orders. Among other provisions, the new Executive Order rescinds a prior mandate for water suppliers to implement all drought response measures associated with a Level 2 Drought. To comply with that mandate, the District has maintained a Stage 2 Drought declaration, mandated water use reductions, implemented the Excessive Water Use Penalty Ordinance (Ordinance), and enforced Section 28 of the District's water service regulations. Mr. Tognolini reviewed actions taken by the Board at its meeting on February 14, 2023, which suspended implementation of the District's Drought Surcharge as of March 1, 2023. At the February 14 meeting, the Board also adopted Resolution No. 35336-23 which declared the Board's intention to take the following steps as soon as legally permissible to: (1) end the District's declared water shortage emergency, (2) downgrade to a Stage 1 Drought, (3) move toward a District-wide voluntary water use reduction goal of 10 percent, (4) cease implementation of the Ordinance, and (5) rescind Section 28. The Board directed the General Manager to implement these actions within 30 days of the end of the State's Level 2 Drought mandate. On March 1, 2023 the District ended its Drought Surcharge. On March 24, the state removed requirements for the District to remain in a Stage 2 Drought, and on March 29, the District will end Stage 2 Drought measures including the Excessive Water Use Penalty and will move to a Stage 1 Drought. At the April 25 Board meeting, staff will present the Final Water Supply Availability and Deficiency Report and the Board will discuss whether the District will remain in a Stage 1 Drought or move to Stage 0 (no drought). Manager of Water Conservation Charles M. Bohlig reviewed the key messages in the District's outreach on drought status as well as the planned modes of communication. General Manager Clifford C. Chan informed the Board the latest list of customers in violation of the Excessive Water Use Penalty Ordinance had been provided at their places.

REPORTS AND DIRECTOR COMMENTS

14. Committee Reports.

- Filed with the Board were the Minutes for the following: January 10, 2023 and March 14, 2023 Planning Committee; and January 10, 2023 and March 14, 2023 Legislative/Human Resources Committee.
- Finance/Administration Committee chair William B. Patterson reported the Committee met earlier in the day and received an update on the Monthly Investment Transactions Report; Employees' Retirement System Annual Financial Update; and the Employees' Retirement System Fiscal Year 2022 Actuarial Valuations and Fiscal Year 2024 Employer Contribution Rates.

15. Other Items for Future Consideration.

None.

16. Director Comments.

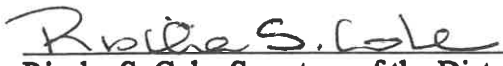
Directors Chan, Coleman Linney, McIntosh, Patterson and Young and President Katz had no reports.

ADJOURNMENT

President Katz announced today's meeting would be adjourned in memory of former EBMUD Director of Wastewater and Central Contra Costa Sanitary District Board member David "Dave" Williams who passed away on March 1, 2023. Director Coleman recounted Dave's many accomplishments at EBMUD and as a leader in the water and wastewater community.

President Katz adjourned the meeting at 2:19 p.m. in honor of David R. Williams.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: April 11, 2023



Andy Katz, President of the Board

