

## **MINUTES**

**Tuesday, November 14, 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 11:06 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

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

Staff participants included General Manager Clifford C. Chan and General Counsel Derek T. McDonald.

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Ivette Rivera commented on a recording she played at the Sustainability Committee meeting, a memo she emailed to the Board from Contra Costa County Superior Court Judge Barry Baskin regarding racism and injustice, and findings from the Pierce/Bland lawsuit; 2) Joey Smith commented on participating in career days at service area schools in the past and that today is Ruby Bridges Walk to School Day; and 3) Eric Larsen, President, AFSCME Local 444 commented on the progress made to address security and employee safety concerns and reported security staff is on site while crews perform work at night. He thanked the Board, the General Manager and management for addressing these issues.

Director Coleman asked when the District planned to begin providing water education in the schools again. General Manager Clifford C. Chan confirmed staff is already reaching out to schools and will continue as part of the District's education program. General Counsel Derek T. McDonald commented that in the Pierce/Bland matter, none of the plaintiffs' claims of discrimination were upheld by the jury.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

President Katz announced the closed session agenda and the Board convened to Administration Building Conference Room 8 for discussion.

### **Regular Business Meeting**

At 1:05 p.m. General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session, the Regular Business Meeting would start at 1:30 p.m. At 1:31 p.m., Vice President Lesa R. McIntosh notified Secretary Cole that the Board was still meeting in closed session and the Regular Business Meeting would start at 1:45 p.m. President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:50 p.m. in the Administration Building Boardroom.

## **ROLL CALL**

Directors John A. Coleman, Lesa R. McIntosh, Marguerite Young, William B. Patterson, and President And Katz were present at roll call. Director Doug A. Linney arrived at 1:51 p.m. Director April Chan was absent (excused).

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.

## **PRESENTATION**

General Manager Clifford C. Chan announced that in recognition of Veteran's Day, the District would honor those employees and Board members who have demonstrated their commitment to our country and the District. The Board observed a presentation highlighting all active District employees and Board members who are United States Veterans and Director William B. Patterson presented a pin and certificate to the following veterans present in the Boardroom: Demetrius Broussard, Janitor; Adrian Gonzalez, Automotive Mechanic B; Rolando Gonzalez, Community Affairs Representative II; Alfred Green, Painter; Isaiah Hinton, Assistant Construction and Maintenance Superintendent; Dennis Karaim, Drafting Supervisor; and Jeffery Toone, Supervising Hydrographer. President Katz presented Director Patterson with his pin and certificate. Mr. Chan also acknowledged employees that were participating in the meeting virtually. Next, Mr. Chan announced that between July 1<sup>st</sup> and September 30<sup>th</sup>, 89 employees reached service award milestones, ranging from 5 to 40 years of service. The group includes one employee celebrating 40 years of service, two employees achieving the 30-year milestone, and six employees with 25 years of service. The Board observed a presentation highlighting these employees and Mr. Chan announced the following employees present in the Boardroom: Gilbert Loreda, Water Distribution Crew Foreman and Vincent Flores, Plant Structures Maintenance Supervisor. He also acknowledged the following employees participating virtually: Mark Foley, Information Systems Administrator II; Tim Cox, Ranger Supervisor; and Angela Curtis, Associate Electrical Engineer. The Board applauded the employees and thanked them for their service.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Lucinda Reinhold, Berryman Reservoir Neighbors Group, commented on the termination clause in the District's lease with Verizon to build a cell tower on Berryman Reservoir and asked the Board to terminate the lease; 2) Sasha Grimm commented on Verizon's legal pursuit to obtain a permit from the city of Berkeley to build a cell tower on Berryman Reservoir and urged the Board to review the Verizon lease termination clause; and 3) Ivette Rivera commented on recordings she played at the November 3, 2023 Board of Directors retreat, a statement she read during closed session public comment, and testimony from the Pierce/Bland trial.

President Katz thanked the speakers for their comments regarding the District's lease with Verizon and asked staff to review the lease's termination clause. Director Young commented on Ivette Rivera paraphrasing Director Young's testimony during the Pierce/Bland trial where she spoke about unconscious bias.

### **CONSENT CALENDAR**

- Items 6a-6b were pulled the from the Consent Calendar for separate discussion.
  - Motion by Director McIntosh, seconded by Director Patterson to approve the recommended actions for Items 1-5, and 7-8 on the Consent Calendar carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).
1. **Motion No. 178-23** Approved the Special Meeting Minutes of October 31, 2023.
  2. The following correspondence was filed with the Board: 1) Presentation entitled "Disclosure Responsibilities under the Federal Securities Law," dated November 14, 2023; 2) Speakers' Bureau and Outreach Record CY23 dated November 14, 2023; 3) Memo (undated) from Contra Costa County Superior Court Judge Barry Baskin regarding racism and injustice; 4) Email dated November 2, 2023 to Katherine Tate from Ivette Rivera titled Fwd: Confidential: EEO Complaint Determination (with attachments); 5) Notice of EEO Complaint Determination dated November 9, 2020 from Case 3:21-cv-04325-AGT, Document 75-3, filed 11/29/22 (with attachments); 6) Memo dated January 8, 2015 to Board of Directors from Delores Turner, Manager of Human Resources regarding Employer-Employee Relations Policy; 7) Memo dated May 19, 2015 to Ivette Rivera, Gardener Foreman from Phillip C. Kohne, Manager of Facilities Maintenance and Construction regarding Retraction of May 15, 2015 Warning Memo; 8) State of California Public Employment Relations Board document regarding Ivette Rivera versus EBMUD, Case No. SF-CE-1310-M; 9) Document entitled National Labor Relations Board March 18, 2015 / Memorandum GG 15-04; and 10) Letter dated January 22, 1986 to Michele A. Ballard, Esq. from Geral R. McKay, Attorney at Law/Arbitrator re: East Bay Municipal Utility District, AFSCME Local 444 Foremen Classification Arbitration.
  3. **Motion No. 179-23** – Authorized an agreement beginning on or after November 14, 2023 with the City of El Cerrito in an amount not to exceed \$1,300,000 for restoring asphalt pavement on Richmond Street and Elm Street as part of the Wildcat Pipeline Improvement, El Cerrito under Specification 2157.
  - 4a – **Motion No. 180-23** – Ratified the extension of the agreement authorized under Board Motion No.
  - 4b. 085-13 and payment of \$50,078 to Advanced Industrial Care, Inc. for the continuous work of providing drug and alcohol testing services rendered between June 30, 2021 and November 14, 2023; and authorized an agreement beginning on or after November 14, 2023 with AIC through June 30, 2026, with three options to renew for additional one-year periods for a total amount, including option years, not to exceed \$302,000 to serve as Third Party Administrator of the District's Department of Transportation Drug and Alcohol Testing Program.
  5. **Motion No. 181-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 043-21 with Mott MacDonald Group, Inc. to increase the agreement amount by \$580,922 to a total amount not to exceed \$2,524,600 for additional engineering design services for the Water Treatment Plant Effluent Meter, Large Customer Meter, Rate Control Station, and Regulator Improvements Design Project.

- 6a– Authorize amendments to the agreements previously authorized under Board Motion No. 218-22, with Bay Area Traffic Solutions, Inc.; Cal-Safety, Inc.; CMC Traffic Control Specialists Inc.; TPR Traffic Solutions; Traffic Control Pros; Traffic Management Inc.; and Yolanda’s Construction Administration & Traffic Control Inc. to increase the aggregate amount of those agreements by \$3,600,000 to a total aggregate amount not to exceed \$6,450,000 and extend the agreement term to November 21, 2024 for flagging services; and authorize additional agreements for flagging services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on November 14, 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.

- Addressing the Board was Eric Larsen, President, AFSCME Local 444 who stated the union objects to contracting out their core bargaining unit work which includes flagging. Local 444 does not object to this contract per se but will continue to engage management to evaluate spending and appropriate staffing levels to reduce the District’s reliance on contracting out.

President Katz thanked Mr. Larsen and commented on the District’s use of contracts for fully maintained and operated (FM&O) services. Staff was asked to provide an update on FM&O services at a future Finance/Administration Committee meeting.

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

**Motion No. 183-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 218-22, with Bay Area Traffic Solutions, Inc.; Cal-Safety, Inc.; CMC Traffic Control Specialists Inc.; TPR Traffic Solutions; Traffic Control Pros; Traffic Management Inc.; and Yolanda’s Construction Administration & Traffic Control Inc. to increase the aggregate amount of those agreements by \$3,600,000 to a total aggregate amount not to exceed \$6,450,000 and extend the agreement term to November 21, 2024 for flagging services; and authorized additional agreements for flagging services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on November 14, 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.

- 7. **Motion No. 182-23** – Cancelled the December 26, 2023 meetings of the Board of Directors.
- 8. **Resolution No. 35370-23** – Authorizing Applications To The Wildlife Conservation Board For Grant Funds from The Wildlife Conservation Board For The Lower Mokelumne River Floodplain Restoration, Lower Mokelumne River Diversion Screening, And Pinole Creek Tomato Stand Fish Passage Projects.

## **DETERMINATION AND DISCUSSION**

### **9. Appoint Manager of Pipeline Construction.**

General Manager Clifford C. Chan announced David Katzev as the candidate for appointment to the position of Manager of Pipeline Construction and highlighted Mr. Katzev's education and experience.

- Motion by Director Coleman, seconded by Director Young, to approve the recommended actions for Item 9. carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

David Katzev thanked the General Manager and the Board for the opportunity and highlighted some of the accomplishments of the District's Pipeline Rebuild program.

– Director Patterson left the meeting at 2:27 p.m. and returned at 2:31 p.m.

**Resolution No. 35371-23 – Appointing David Katzev As Manager Of Pipeline Construction**  
(effective November 20, 2023).

### **10. Appointment of David Glasser As Controller.**

General Manager Clifford C. Chan announced this item would be pulled from the agenda.

### **11. Legislative Update.**

Manager of Legislative Affairs Kathy Viatella provided an overview of the bills in the mid-session report on state legislation which contains the status of bills on which the Board adopted a formal position during the 2023 legislative year. She also provided an update on the status of additional bills of direct interest to the District. Ms. Viatella responded to Board questions regarding some of the bills in the report and providing the District's positions on bills to the District's upcountry partners. Next, she highlighted state and federal legislative activities including the impending federal government shutdown. Director Young asked if the District could reach out to customers that may be financially impacted by the shutdown and whether the District is connecting with support organizations that may be able to assist District customers. Director of Customer and Community Services Andrew L. Lee explained how the District has historically worked with customers who call regarding hardships and explained staff will continue working with customers that contact the District. General Manager Clifford C. Chan announced he received notice that the House passed a plan to avert the federal government shutdown. Staff was asked to ensure the District's positions on bills are shared with the District's upcountry partners when appropriate.

### **12. Appoint Ad Hoc Committee to Negotiate Amendments to Employment Agreements with the General Manager and the General Counsel.**

President Katz announced the Board met in closed session earlier to conduct performance evaluations of the General Manager and the General Counsel. Consistent with past practice, President Katz requested three members of the Board to serve on an Ad Hoc Committee as the Board's representatives in negotiating any amendments to the employment agreements with the General Manager and the General Counsel. Director Lesa R. McIntosh, Director Doug A. Linney, and President Katz said they would be willing to serve on the Ad Hoc Committee.

- Motion by Director Young, seconded by Director Patterson, to appoint Director Doug A. Linney, Director Lesa R. McIntosh, and President Andy Katz to serve on the Ad Hoc Committee to negotiate any amendments to the employment agreements with the General Manager and the General Counsel carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

**Motion No. 184-23** – Appointed Director Doug A. Linney, Director Lesa R. McIntosh, and President Andy Katz to serve on the Ad Hoc Committee to negotiate any amendments to the employment agreements with the General Manager and the General Counsel.

- Director Young left the meeting at 3:03 p.m. and returned at 3:04 p.m.

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

#### Presentation on Disclosure Responsibilities Under Federal Securities Laws

Jonathan Guz, Esq. of Stradlin Yocca Carlson & Rauth provided the presentation on the District's and Board's disclosure responsibilities under Federal securities laws. Mr. Guy discussed the standards under the Federal securities laws that apply when approving the District's Official Statement in connection with a bond sale or otherwise making public statements; the duties and responsibilities of Board members in approving the District's Official Statement in connection with a bond sale; SEC enforcement and why disclosure compliance is important; and disclosure controls to mitigate exposure.

- Director Young left the meeting at 3:03 p.m. and returned at 3:04 p.m.
- President Katz left the meeting at 3:09 p.m. and returned at 3:011 p.m.

#### Monthly Report – October 2023

General Manager Clifford C. Chan announced he was available to answer questions regarding the monthly report. He also noted the Speakers' Bureau and Outreach Record CY23 had been provided at Board places. Director Coleman commented on recent media coverage on salmon returns and the information under the Customer and Community Services section of the monthly report.

### **REPORTS AND DIRECTOR COMMENTS**

#### **14. Committee Reports.**

- Filed with the Board were the Minutes for the October 31, 2023 Special Finance/Administration Committee meetings.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received reports on East Bay Creek Habitat Restoration Projects and the Lower Mokelumne River (FERC Project 2916) Relicense Project.
- Sustainability Committee Chair Marguerite Young reported the Committee met earlier in the day and received updates on the Calendar Year 2022 Greenhouse Gas Inventory and the Resource Recovery Program.

**15. Other Items for Future Consideration.**

None.

**16. Director Comments.**

- Director Coleman reported presenting at the EBMUD Ward 2 briefing in Lafayette on October 17; and attending the EBMUD Special Board meetings in Oakland on October 31 and the EBMUD Board of Director's retreat in Oakland on November 3. He reported on plans to attend the ACWA fall conference in Indian Wells November 28–November 30 and that he plans to participate in the November 28 Board meetings via teleconference.
- Director Linney reported attending the joint briefing with Director Patterson for EBMUD Wards 5 and 6 on November 8 and commented on the positive remarks from the participants. He thanked staff for organizing and presenting information at the event.
- Director Patterson reported attending the joint briefing for EBMUD Wards 5 and 6 on November 8 and commented attendees were interested in the key information presented. He thanked staff for organizing and presenting information at the event.
- Directors Chan, McIntosh, Young, and President Katz had no reports.

**ADJOURNMENT**

President Katz adjourned the meeting at 3:27 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: November 28, 2023



Andy Katz, President of the Board

