MINUTES

Tuesday, December 11, 2018

East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:06 a.m. in the Administration Center Boardroom.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Fred S. Etheridge (Item 1a), Director of Water and Natural Resources Richard G. Sykes (Item 1a), and newly appointed Director of Water and Natural Resources Michael T. Tognolini (Item 1a).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President McIntosh announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

Regular Business Meeting

President McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. in the Administration Center Boardroom.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President McIntosh led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board was Linus Eukel, Executive Director, John Muir Land Trust who congratulated Director of Water and Natural Resources Richard G. Sykes on his upcoming retirement and presented Mr. Sykes with a framed memento on behalf of the John Muir Land Trust.

Agenda Items Discussed Out Of Order

– The Board took action on Determination and Discussion Items 17a-17e before taking action on Consent Calendar Items 1-14; however, the minutes are recorded to reflect the order of items as they appear on the agenda. Director Coleman was excused to leave the meeting at 1:38 p.m. after the Board took action on Items 17a-17e.

CONSENT CALENDAR

– Item 14 was removed from the Consent Calendar for comment.

• Motion by Director Young, seconded by Director Mellon, to approve the recommended actions for Items 1-13 on the Consent Calendar, carried (6-0) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

1. **Motion No. 171-18** - Approved the Regular Meeting Minutes of November 27, 2018.

2. The following correspondence was filed with the Board: **1)** Letter from Lafayette resident Bill Lau entitled, "Presentation to EBMUD Board – December 11, 2018"; **2)** Presentation entitled, "Public Hearing Main Wastewater Treatment Plant (MWWTP) Yerba Buena Access Road Acquisition," dated December 11, 2018; 3) Presentation entitled, "Leland Reservoir Replacement Project Final Environmental Impact Report and Project Approval," dated December 11, 2018; **4)** Presentation entitled, "Proposed Revisions to Watershed Rules and Regulations," dated December 11, 2018; and **5)** Speakers' Bureau and Outreach Record CY18-19, dated December 10, 2018.

3. **Motion No. 172-18** - Awarded a contract to Integrated Archive Systems, Inc., in an amount, after the addition of taxes, not to exceed $205,100 for supplying Commvault software and support dedicated to the backup and restoration of critical business data for three years, beginning on or after December 12, 2018.

4. **Motion No. 173-18** - Authorized an agreement beginning on or after December 12, 2018 with Aramark Uniform Services, a division of Aramark Uniform and Career Apparel, LLC, in an amount not to exceed $150,000 annually for rental and laundry service for standard and flame resistant garments for one year with four options to renew for an additional one-year period for a total cost of $750,000.

5. **Motion No. 174-18** - Authorized an agreement with the Sycamore Mutual Water Company (SMWC) to perform environmental, financial, and technical analysis needed to evaluate a potential long-term water transfer project, and develop a framework under which EBMUD and SMWC would negotiate a future long-term agreement for EBMUD to purchase water from SMWC in dry years. The agreement includes a commitment for EBMUD to reimburse SMWC up to $80,000 for consulting services.

6. **Motion No. 175-18** - Authorized an amendment to the agreement awarded under Board Motion No. 140-15 dated July 28, 2015, to increase the agreement amount by $1,700,000, to an amount not to exceed $8,800,000, for additional wet weather Consent Decree required inflow and infiltration investigations of the regional wastewater collection system by the following vendors: ADS Corporation; Andes Construction, Inc.; Electro Scan, Inc.; Hoffman Southwest Corporation, dba Professional Pipe Services (Pro-Pipe); Infrastructure Engineering Corporation; Pacific General Engineering; Santact, Inc., dba Roto-Rooter; and V&A Consulting Engineers, Inc., through the remainder of the agreement period ending July 28, 2020.

7. **Motion No. 176-18** - Authorized an amendment to the agreement with California Marine Diesel, Inc. to increase the amount by $1,553,058 for a total cost not to exceed $3,325,000 for engine overhaul services for the District's Main Wastewater Treatment Plant Power Generation Station.

8.1.-8.2. **Motion No. 177-18** - Approved the assignment of the contract for the Electronic Bill Presentment and Payment Services from CheckFree Services Corporation to Fiserv Solutions, LLC (Fiserv); and authorized an extension of the current contract for Electronic Bill Presentment and Payment Services to be assigned to Fiserv for a period beginning December 31, 2018 and ending December 31, 2023 for an estimated additional amount of $625,000 for a total cost not to exceed $1,070,000.

9. **Motion No. 178-18** - Authorized the execution of a five-year Ground Lease with an option to extend for an additional five years with S&S Trucking for 4.14 acres located at the District's McMillan property off Grant Avenue in San Lorenzo, California.

10. **Motion No. 179-18** - Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed $140,000.

11. **Resolution No. 35123-18** – Amending And Restating The East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan.

12.1.-12.3. **Resolution No. 35124-18** – Authorizing The Acquisition Of Real Property In Oakland In Alameda County, California And Amending The Fiscal Year 2019 Capital Budget To Appropriate For Expenditure An Additional $9,665,000.

13. **Resolution No. 35125-18** – Declaring Results Of Election Held On November 6, 2018 For The Election Of Directors Of The East Bay Municipal Utility District.

14. **Resolution No. 35126-18** – Appointing Mona L. Favorite-Hill As Senior Community Affairs Representative *(effective January 7, 2019)*.

- Director Mellon welcomed Ms. Favorite-Hill and offered congratulations on her appointment. Ms. Favorite-Hill thanked the Board for the opportunity and said she looks forward to working at the District.

- Motion by Director Mellon, seconded by Director Linney, to approve the recommended action for Item 14 on the Consent Calendar, carried (6-0) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

PUBLIC HEARING

15.1. **Conduct a public hearing to receive comments on a Resolution of Necessity to acquire formal fee property rights for the East Gate Access Road to the Main Wastewater Treatment Plant MWWTP located off Yerba Buena Avenue on the Emeryville/Oakland border.**

President McIntosh opened the public hearing at 1:42 p.m.

Manager of Customer and Community Services Andrew L. Lee presented an overview of the District's efforts to acquire fee property rights through the eminent domain process for the section of the Yerba Buena Access Road that starts east of the railroad bridge to the Mandela Parkway Gate. Mr. Lee explained that the District has attempted to work with the property owner to acquire the fee property rights and has made an offer to purchase the property rights with no success. Without formal property rights, the District is at risk of losing a vital access point to the MWWTP and cannot make improvements and repairs to ensure the road and gate remain in usable condition. The District sent the property owner, East Bay Bridge Retail, LLC, notice of the public hearing and Board meeting by Federal Express on November 21, 2018. Under Agenda Item 15.2, the Board will consider adopting a Resolution of Necessity for eminent domain proceedings to acquire the fee property rights and authorizing the General Counsel to file eminent domain actions in Alameda County Superior Court. General Manager Alexander R. Coate stated that the Planning Committee in its meeting this morning unanimously supported the staff recommendations.

President McIntosh asked for comments from representatives of the property owner or other interested persons from the public. There were no comments.

President McIntosh asked for a motion to close the public hearing. Director Patterson motioned to close the public hearing at 1:48 p.m.

- Motion by Director Patterson, seconded by Director Linney, to close the public hearing at 1:48 p.m., carried (6-0) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Motion No. 180-18 - Conducted a public hearing to receive comments on a Resolution of Necessity to acquire formal fee property rights for the East Gate Access Road to the Main Wastewater Treatment Plant located off Yerba Buena Avenue on the Emeryville/Oakland border.

15.2. **Adopt a Resolution of Necessity to initiate eminent domain proceedings for the acquisition of fee property rights from East Bay Bridge Retail, LLC; and authorize the General Counsel to file eminent domain actions in Alameda County Superior Court.**

- Motion by Director Patterson, seconded by Director Linney, to approve the recommended actions for Item 15.2, carried (6-0) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

  Resolution No. 35127-18 – Resolution Of Necessity For The Acquisition By Eminent Domain Of A Fee Interest In The Wastewater Treatment Plant Yerba Buena Avenue Access Road And Authorizing Condemnation Proceedings.

DETERMINATION AND DISCUSSION

16. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine summarized Legislative Report No. 09-18 and the staff recommendation for S. 3564 (Cardin) Low-Income Water Customer Assistance Programs Act of 2018. Legislative/Human Resources Committee member Marguerite Young reported that the Committee met this morning and unanimously supported the staff recommendation.

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

  Motion No. 181-18 - Received Legislative Report No. 09-18 and approved a SUPPORT position on the following bill: S. 3564 (Cardin) Low-Income Water Customer Assistance Programs Act of 2018.

Next Ms. Dumaine presented an overview of the staff recommendations on four state legislative initiatives for 2019: 1) Advance EBMUD's interests in the context of utility wildfire mitigation plans including the de-energization of electric lines; 2) Advance EBMUD's interests in legislative efforts to address forest health; 3) Seek constructive ways to advance EBMUD's interests as the legislature continues to consider providing access to safe drinking water for disadvantaged communities; and 4) Seek constructive ways to advance EBMUD's interests as the administration and the legislature consider ways to provide assistance to low-income water customers. The Board discussed the initiatives and requested that if asked, staff assist disadvantaged communities with writing grants to apply for water bond funding. Additionally, the Board asked staff to assess what legislative modifications can be made to limit the number of elected offices a person can run for at a time. In conclusion, Ms. Dumaine gave an update on state and federal activities after the November 6 elections.

- Motion by Director Young, seconded by Director Patterson, to approve the State Legislative Initiatives for 2019 Legislative Year, carried (6-0) by the following roll call vote: AYES (Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Motion No. 182-18 – Approved the following state legislative initiatives for the 2019 Legislative Year:

LEGISLATIVE PROPOSAL	2019 RECOMMENDATIONS
1. Advance EBMUD's interests in the context of utility wildfire mitigation plans including the de-energization of electric lines.	**Proceed** – The discussion of electric utility wildfire mitigation plans, including the de-energization of electric lines to prevent wildfires, may continue in the legislature in 2019 and may be considered in the context of follow-up legislation to SB 901 (Dodd). Staff will seek opportunities to strengthen wildfire mitigation plan requirements related to de-energization and critical water utility facilities. 1. Staff will continue to work with PG&E and the CPUC to seek robust inclusion of water utility facilities in electric utility wildfire mitigation plans with regard to preparing for and undertaking de-energization, and given prioritization during re-energization. 2. Staff will work with other water agencies and relevant statewide associations to build a coalition, as appropriate. 3. Staff will seek opportunities to strengthen wildfire mitigation plan requirements related to de-energization, in the context of any follow-up legislation to SB 901, to ensure robust inclusion of water utility facilities in electric utility wildfire mitigation plans with regard to preparing for and undertaking de-energization, and given prioritization during re-energization.
2. Advance EBMUD's interests in legislative efforts to address forest health.	**Proceed** – The legislature is likely to continue to discuss forest health in the context of wildfire preparedness in 2019 and will likely consider follow-up legislation to SB 901 (Dodd). Though SB 901 included some funding for forest health and wildfire fuels reduction, there may be efforts in 2019 to identify additional sustainable funding for on-going forest health efforts. 1. Staff will continue to monitor legislation on forest and watershed health, and identify potential opportunities for EBMUD to engage, particularly through its role in the Upper Mokelumne River Watershed Authority. This is consistent with EBMUD's current approach.
3. Seek constructive ways to advance EBMUD's interests as the legislature continues to consider providing access to safe drinking water for disadvantaged communities.	**Proceed** – The issue of providing access to safe drinking water for disadvantaged communities, and establishing a steady source of funding for this purpose remains outstanding before the legislature. It is likely discussions will continue in 2019. 1. Staff will bring specific legislative proposals on this issue to the Board for discussion and consideration, as appropriate. Staff will consider any proposals that include a statewide retail water user surcharge in the context of the April 24, 2018 EBMUD Board adopted revised policy position on statewide retail water user surcharges.

LEGISLATIVE PROPOSAL	2019 RECOMMENDATIONS
4. Seek constructive ways to advance EBMUD's interests as the administration and the legislature consider ways to provide assistance to low-income water customers.	**Proceed** - The State Water Resources Control Board (SWRCB) has been directed to develop a plan for the funding and implementation of a low-income water-rate assistance program by AB 401 (Dodd). The SWRCB was expected to report to the legislature in 2018 on its recommendations for a low-income water-rate assistance program, including recommendations for any legislative action that may be needed. However, this report has been delayed indefinitely. 1. Staff will continue to engage with the SWRCB as it works to finalize its report. 2. Staff will bring relevant legislative proposals on this issue to the Board for discussion and consideration, as appropriate. Staff will consider any proposals that include a statewide retail water user surcharge in the context of the April 24, 2018 EBMUD Board adopted revised policy position on statewide retail water user surcharges.

17. **Leland Reservoir Replacement Project – Certify the Final Environmental Impact Report (EIR) and Project Approval.**

Associate Civil Engineer Oscar A. Herrera presented an update on the project which will replace the existing 18 million gallon (MG), open-cut reservoir with two new 8 MG pre-stressed concrete tanks in the existing open-cut basin. The project will also replace the existing 36-inch transmission pipeline that traverses under the existing reservoir with a new pipeline in city streets and install a new 30-inch storm drain pipeline on site and connect it to the City of Lafayette's existing storm drain system. He explained that the reservoir is critical in serving the Leland Pressure Zone which serves portions of Lafayette, Pleasant Hill and Walnut Creek and needs to be replaced because it has reached the end of its useful service life. Mr. Herrera discussed the proposed site plan, the renderings for the new fencing and trees that will be planted for screening purposes, and the public outreach and scoping meetings with neighbors and Lafayette City Council. The project's Draft EIR was circulated for public comment from January 25 through March 12, 2018. The Draft EIR analysis concluded that there are potential impacts from construction noise that will require the District to approve a Statement of Overriding Considerations and determine that the remaining potential impacts are either less than significant or would be less than significant with mitigations. The Final EIR, which was made available on November 29, responded to comments received during the Draft EIR comment period and a February 8, 2018 community meeting. If approved, the project will begin in 2022 and 2024.

- Addressing the Board was Lafayette resident Bill Lau, who commented on the responses to public comments in the Final EIR, the proposed screening plan for the new tanks and the District's communication efforts during project outreach.

The Board thanked Mr. Lau for his comments and discussed alternatives to the proposed screening plan for the new tanks including an alternate paint color for the tanks as well as the overall project landscaping plans. In consultation with General Counsel Craig S. Spencer, General Manager Alexander R. Coate advised that to address Mr. Lau's concerns regarding the screening and project landscaping plans, with Board approval, the resolution approving the project can be modified to include the following language: "...Be it further resolved that as part

of Project implementation, the General Manager is hereby directed to take such actions as shall be necessary to ensure that the project landscape plan set forth in the Final EIR is implemented to achieve the same or a similar level of screening of the Project tanks as depicted in the Final EIR's post-construction visual simulations." The Board concurred with the proposed modification to the resolution language.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Items 17a-17e, including the modification to the resolution language, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

17a.-17e. **Resolution No. 35122-18** – Certifying The Final Environmental Impact Report For The Leland Reservoir Replacement Project, Making Findings, Adopting The Mitigation Monitoring And Reporting Plan, And Approving The Project.

18. **Adopt the Proposed Amendments to the Watershed and Recreation Rules and Regulations.**

Director of Water and Natural Resources Richard G. Sykes presented a summary of the proposed amendments to the Rules and Regulations which govern usage of watershed areas. The Rules and Regulations were last updated in 2014. In addition to a number of minor revisions clarify existing rules or better ensure public safety, key updates include: revisions to be consistent with the updated East Bay Watershed Master Plan which now allows bicycles on selected East Bay trails; extended smoking prohibitions in watershed areas to be more consistent with many of the adjacent open space and recreation jurisdictions; and a prohibition on glass bottles and containers along the Camanche Reservoir shoreline to reduce injury incidents and to be consistent with other areas that have encountered this problem.

- Motion by Director Young, seconded by Director Patterson, to approve the recommended action for Item 18, carried (6-0) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

Resolution No. 35128-18 – Amending Rules And Regulations Relating To Public Use Of East Bay Municipal Utility District Watershed, Reservoirs And Recreation Areas.

19. **General Manager's Report.**

General Manager Alexander R. Coate announced the Board received the Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2019 and a Summary of the 2018 Committee and Workshop Topics memo and the November Monthly Report in their packets and the latest Speakers' Bureau and Outreach Record at their places. It was noted that some of the forecasted 2019 meeting dates in the Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2019 and a Summary of the 2018 Committee and Workshop Topics memo need to be updated. General Manager Coate advised an updated memo will be provided at the next Board meeting and in conclusion, reminded the Board of Richard Sykes' retirement event immediately following the Board meeting.

REPORTS AND DIRECTOR COMMENTS

20. **Committee Reports.**

- Filed with the Board were the Finance/Administration Committee Minutes of November 27, 2018.

21. **Other Items for Future Consideration.**

- None.

22. **Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA Conference November 27-29 in San Diego; Water Foundation Event on December 3 in Oakland; and the Contra Costa Mayors' Conference on December 6 in Walnut Creek. He reported on plans to attend the East Bay Leadership Group Board meeting on December 14 in Oakland.

- Director Mellon reported attending/participating in the following events: ACWA Conference November 29, in San Diego; Alameda County Democrats Annual Party on December 5 in San Leandro; Contra Costa Mayors' Conference on December 6 in Walnut Creek; Alameda County Building Trades annual luncheon on December 7 in Oakland; and Leo Family Community Development event on December 8 in Oakland.

  Directors Katz, Linney, Patterson, Young, and President McIntosh had no comment.

ADJOURNMENT

President McIntosh adjourned the meeting at 2:20 p.m.

SUBMITTED BY:

Rischa S. Cole

Rischa S. Cole, Secretary of the District

APPROVED: January 8, 2019

Lesa McIntosh, President of the Board