

**DSRSD • EBMUD RECYCLED WATER AUTHORITY
(DERWA)**

**Board of Directors Special Meeting Minutes
Monday, October 5, 2009**

Dublin San Ramon Services District
7051 Dublin Boulevard, Dublin, California

1. CALL TO ORDER – Chair Mellon called the DSRSD • EBMUD Recycled Water Authority (DERWA) meeting to order at 6:38 p.m. at the Dublin San Ramon Services District Boardroom.

2. PLEDGE TO THE FLAG

3. ROLL CALL – Directors present: Chair Frank Mellon, Vice Chair Jeffrey Hansen, and Director Daniel Scannell. DERWA Staff present: James Bewley, Authority Manager; Richard Lou, Treasurer; Robert Maddow, General Counsel; and Nancy Gamble Hatfield, Authority Secretary.

Director John Coleman participated in the meeting starting at 6:55 p.m. from teleconference location 165 Rudgear Drive, Walnut Creek, California.

4. SPECIAL ANNOUNCEMENTS/ACTIVITIES - None

5. PUBLIC COMMENT – 6:39 p.m. – None received.

6. APPROVE MINUTES – Regular Meeting of *June 22, 2009*, Special Meeting of *July 13, 2009* and Regular Meeting of *August 24, 2009*
Motion by Director Scannell, Second by V.C. Hansen to approve the minutes from the regular meeting of *June 22, 2009*, special meeting of *July 13, 2009* and regular meeting of *August 24, 2009*.

Motion carried (3-0) by the following vote:

AYES: Scannell, Hansen, Mellon

NOES:

7. CONSENT CALENDAR

A. Treasurer's Report – Treasurer's Report for August 31, 2009

Motion by Director Scannell, Second by Chair Mellon to approve the Consent Calendar.

Motion carried (3-0) by the following vote:

AYES: Scannell, Mellon, Hansen

NOES:

Chair Mellon recommended the agenda items be taken out of order until Director Coleman could join the meeting via teleconference. He suggested that Authority Manager Bewley give the Manager's Report under Item 9.

9. MANAGER'S REPORT

- Contracts Initiated Since the Board Meeting of August 24, 2009 – None.
- Pump Station R200A/Pipeline IH Project Update – Authority Manager Bewley stated that following the events that took place in the last week, the U.S. Army Corps of Engineers (USACE) has decided to take substantial action against the Contractor. The contractor has failed to get the pipeline work done in Bollinger Canyon and the City of San Ramon is not willing to extend the Encroachment Permit beyond October 9, 2009. When testing the pipeline, a leak was found and a section of pipe failed the pressure test. The City of San Ramon extended the Encroachment Permit several times between August 22, 2008, the contract deadline for completion of the pipeline work, and October 4, 2009, and has now set conditions for its renewal that are thought to be unacceptable to the Contractor. Since the construction management decisions belong to the USACE, they are now considering deleting portions of the unfinished work from the contract. If this occurs, the USACE will need to pursue alternatives for the completion of that work. The City of San Ramon's staff, Mayor, and City Manger are frustrated with the pipeline construction situation. DERWA supports the fact that the USACE wants to get the work finished within a reasonable timeframe and at a reasonable cost by removing the remaining pipeline work from the contract. The Pump Station completion date was set for mid-May 2009, and since there is still a lot of work to be done at the Pump Station, Mr. Bewley believes it will still be many more weeks before its completion and start up of the project.

Chair Mellon asked why there was a hold up with the contractor.

Mr. Bewley stated that the contractor never gave a realistic schedule, and when schedules were provided, the contractor was unable to perform the work as promised. Therefore, most of the work on the pump station, and all of the pipeline work, are being performed by subcontractors.

Chair Mellon asked Mr. Bewley for the status of any liquidated damages.

Mr. Bewley responded that the liquidated damages are \$2,900 per day from May 15, 2009, to the present. He also pointed out that the USACE's procurement process doesn't withhold liquidated damages from contractor payments the way DERWA would. Instead, the USACE waits until the end of the job and then assesses liquidated damages. The accumulated amount to date is approximately \$500,000 dollars.

Director Scannell requested a closed session item on this topic at the next meeting.

Mr. Bewley stated that he will know more in the next couple of days following a meeting between senior USACE construction managers and the contractor regarding the remaining pipeline work.

Chair Mellon concurred with the need for a closed session item at the next meeting.

At 6:45 p.m., General Counsel Maddow stated for the record that tonight's agenda has 165 Rudgear Drive, Walnut Creek, California, listed as an alternate teleconference location and that Director Coleman would be participating in the meeting from that location.

Director Coleman called in at 6:46 p.m. but had not yet arrived at the published alternate teleconference location and was therefore unable to contribute to the meeting in his role as Boardmember.

Chair Mellon summarized the information to Director Coleman regarding the Pump Station R200A/Pipeline IH Project given by Mr. Bewley.

Chair Mellon stated his concern about possible litigation with this project.

- EBMUD Distribution System Phase 2 3 4 Project Update – Mr. Bewley stated that the design for this project is proceeding. The design is 95% completed and has been submitted to the USACE for review. He invited Ms. Florence Wedington to comment on the status of these designs.

Ms. Wedington stated that on November 11, 2009, there will be a Biddability, Constructability, Operability and Environmental (BCOE) conference. At that time, the USACE will complete the check of the design documents to ensure they meet their criteria. The USACE will then make their comments on the design, and then EBMUD will have a couple of weeks to incorporate any comments or changes. The plan is to advertise the project for bids in mid-December.

Chair Mellon asked if the Board had any question or comments.

Ms. Wedington noted that EBMUD is preparing a response to the City of San Ramon regarding their request for the type of information they should include in their Encroachment Permit. Their response should be ready later in the week. The City of San Ramon wants a week to review the response, and then all parties will meet to seek a resolution on the permit conditions. They will also have a meeting with the Town of Danville tomorrow since they would like to have similar encroachment permit conditions.

At 6:55 p.m. Director John Coleman noted for the record that he had arrived at the noticed teleconference location, 165 Rudgear Drive, Walnut Creek, California, and was officially joining the Board meeting as a participating Boardmember. Director Coleman had the agenda posted at his location and had it available for any interested member of the public. His location was also open to the public at this time.

Chair Mellon suggested moving confirmation of the next meeting date until later in tonight's meeting and went back to agenda Item 8.

8. BOARD BUSINESS

A. Status Update and Workshop Presentation on Long Term Debt Financing Alternatives

Treasurer Lou introduced the agenda item by reporting that at the last DERWA Board meeting, the Board directed staff to look at replacing the current \$50 million Commercial Paper Program with either a fixed rate bond or a combination of a fixed rate bond coupled with a Commercial Paper Program. Initially, staff believed a "step up" provision would be the best way to get the financing approved. However, upon further investigation by the financial consultants and discussions with staff from DERWA, EBMUD and DSRSD, it was decided that the step up provision would not work well at this time and, therefore, staff has developed four alternatives listed on the attachment to agenda Item 8.A. Mr. Lou reported that staff believes the best alternative is to get an extension of the Commercial Paper Program for up to one year to allow time to develop other options.

Mr. Lou then introduced financial consultant Ms. Jenny Poree from Montague Derose & Associates.

Ms. Poree addressed the Board and stated that since she last addressed the Board on August 24, 2009, the financial consultant team has been reviewing alternatives in light of the fact that the DERWA Letter of Credit for the Commercial Paper Program is nearing expiration. The team considered the legal and financial ramifications of each alternative and believes the market is still strong, and that both long and short term rates are favorable. They investigated the practical, policy, financial and legal aspects of the step up provision. Ms. Poree believes some elements of the documents still require further legal review. From a policy perspective, the two Member Agencies are still working to determine if adequate remedies exist that will enable them to feel comfortable with the final documents. It is also essential that the investor community and credit bureaus believe that a non-defaulting party has sufficient financial remedies available.

The financial consultant team has presented various options to JP Morgan for consideration regarding the Commercial Paper Program Letter of Credit. JP Morgan can choose either a six month or a one year extension, which they are now reviewing under various credit structures. The structures could be either the current DERWA legal structure, a step up structure, or a split structure where each Member Agency is separately responsible. In the later case, EBMUD and DSRSD would each have a separate credit pledge. JP Morgan is looking into the cost and whether they could get credit approvals for each of these different structures. Ms. Poree emphasized the importance of this because, as the time gets closer to the expiration of the Letter of Credit, DERWA will need to show that the Agency has made a good faith effort to extend, or to replace it.

If the Board is interested in pursuing a six month extension, it would give the financial consultant team an opportunity to explore in more depth the governing documents. This would also give the Member Agencies time to decide if a step up provision is a workable alternative or if they prefer to pursue a split structure.

Director Coleman asked for clarification, from an engineering perspective, on the "cons" section of Option 5 contained in the agenda materials.

Authority Manager Bewley noted that the step up provision previously explained to the Board is quite common in the power industry. For example, a group of municipalities may

join together and build a power plant. They agree to a step provision so that if one of the parties defaults, the others can sell the power. Mr. Bewley explained that this is more difficult in the case of water. To utilize the recycled water would require that an extensive distribution system be built, and the recycled water could not be sold on the open market for much value in the short term. The value, however, would be realized in the long term, when a distribution system had been built and the water was sold to customers.

Chair Mellon asked if the Board had other questions.

Director Scannell remarked that in the middle of the first paragraph of the Summary and Recommendation for Item 8.A it read as follows: "After further review the group concluded that the step up provision for the DERWA program would not be advisable because of concerns over the remedies..." He asked if "the group" was the staff of EBMUD and DSRSD, and not the Board.

Mr. Bewley acknowledged that "the group" referred to staff and management of both EBMUD and DSRSD. He said that the staff from the Member Agencies each had certain views they believed important for the step up provisions to work. However, Mr. Bewley is of the opinion that staff can find a way to work through the process to address concerns. After a long meeting with staff of the Member Agencies, it became clear the discord over these positions could not be resolved before the end of the year so other alternatives were discussed.

Director Coleman commented that he believes Option 1 makes the most sense at this juncture. Option 1 would extend the existing commercial paper agreement from 6 to 12 months.

V.C. Hansen confirmed that he is in agreement with Director Coleman and supports Option 1.

Chair Mellon commented that DERWA has come a long way and believes it is important for the Member Agencies to look at this financing effort in the correct context; as a joint project working together, as well as from an individual agency perspective into the future. He mentioned, for example, that EBMUD will shortly vote on their Water Supply Management Plan, of which a key component of the Plan is recycled water. He noted that there must be a balance of that program while honoring and supporting the DERWA partnership.

Chair Mellon voiced his support for Option 1 and believes it is important for the Directors to give their individual staff further direction. He stated that he plans to e-mail EBMUD General Manager Dennis Diemer and request a presentation to the Finance and Administration Committee of their Board. He said that he hopes the staff from each Member Agency will take the long range view to determine how the risks will enhance each agency's particular programs and their future needs. Chair Mellon noted the phrase on the Summary and Recommendation sheet that reads "...concurrently investigate DERWA issuing fixed rate debt for DSRSD only." He stated he is not prepared to go in that direction and that he would prefer to give the staff the opportunity to see how they can be much more creative in recognizing some of the long range opportunities.

V.C. Hansen thanked Ms. Poree for her presentation. He acknowledged that these are complicated issues and that the Board is aware of the types of challenges that special districts, municipalities, and individuals are facing. He stated that at DERWA they have always worked their way through challenges starting from the beginning when he and Director Coleman were founding Directors of this JPA. He said that Directors have to consider what is right for their agencies and their commitment in the JPA. V.C. Hansen said he feels that DERWA is a timeless commitment for both Agencies and occasionally a reaffirmation to the commitment that must be made. He explained that sometimes this relationship requires some give and take by each Agency and sometimes, as Chair Mellon pointed out, some reasonable risk-taking for the greater good.

V.C. Hansen continued by stating that each summer DERWA sells more recycled water. He expressed how excited he is that EBMUD and DERWA are taking recycled water farther north where large projects will likely come to fruition. He, too, supports Option 1 to extend the commercial paper agreement for 6 to 12 months. At the last DERWA meeting, the Board voted unanimously to give staff direction to pursue a fixed rate financing with the step up provision. However, now, the perception of what is meant by a step up provision is skewed. The idea that there would be a water foreclosure makes no sense to him. He believes now is the time for both Member Agencies to be cohesive. V.C. Hansen commented that he likes Chair Mellon's ideas about using creativity and maximizing resources. He stated that EBMUD has financial strength and DSRSD has water; and that's how it all began. V.C. Hansen believes there is a way to navigate through this financial situation and he wants what is good for both Member Agencies and DERWA.

Director Coleman reiterated his support for the Option 1 alternative. He agrees it is unlikely one of the Member Agencies would default and one year would give time to consider and assess concerns and positions. He acknowledged the need to get an agreement in place to protect the Member Agencies and to find a solution that is fair and equitable.

Director Scannell thanked staff for gathering all the information and for all the work done in an attempt to get this financial project completed. He supports Option 1 also. He stated that although staff from each Member Agency may have a strong inclination toward one financing strategy or another, he requested these options be brought to the Board so they can consider the provisions and possible remedies. This will allow the DERWA Board members to debate the issues and then bring the information back to their respective boards.

Chair Mellon said that he would welcome a Motion that would direct staff to pursue a short term extension of the current letter of credit with JP Morgan for a term of up to one year and to concurrently investigate other alternatives, including a step up provision.

V.C. Hansen offered that he would be willing to make a motion comprised of Chair Mellon's suggestion and to include a fixed rate financing alternative. He noted that the motion would also need to include a mechanism that provides security similar to a step up clause.

Chair Mellon said he would support that. He asked Director Scannell if he wanted to add any comments.

Director Scannell stated that he wanted the DERWA Board to receive information on why each Member Agency may have a position on one financing alternative or another because being privy to those internal discussions could provide helpful insight.

V.C. Hansen indicated the Board could give staff that direction when it was time to implement the decision and assuming the letter of credit is successfully accomplished, Mr. Bewley could receive direction so he can guide staff's work.

Director Coleman stated that he was comfortable with the direction being discussed so far by the Board.

Chair Mellon stated that the final portion of the Motion might be to direct staff to creatively develop options for the successful continuance of DERWA.

Mr. Bewley requested that staff's direction be open to getting the Letter of Credit extended and concurrently bringing back options that deal with the partnership and strengths.

Motion by Director Scannell, Second by V.C. Hansen, to direct staff to pursue a short term extension of the Letter of Credit with JP Morgan for a term of up to one year, and further investigate fixed rate refinancing with a step up provision, including giving the Board all the information about potential remedies, alternative remedies, and other alternative financings that would creatively develop options for the successful continuance of DERWA.

Motion carried (4-0) by the following vote:

AYES: Scannell, Hansen, Coleman, Mellon

NOES:

Chair Mellon confirmed staff had all the information they needed to proceed.

Treasurer Lou reported that staff was working with JP Morgan on the extension of the letter of credit. He then asked Ms. Poree to give a brief schedule of when she thought actions would occur.

Ms. Poree responded that JP Morgan is going to a level one credit committee where all of the financial statements and budgets are submitted. On October 8, 2009, JP Morgan will take the credit information to a committee to get approval and rates. Afterward, there will probably be requests for changes to documents and negotiations will begin to finalize the documents for the rating agency. It will probably take about a month to get through the rating process.

- Confirm Next Meeting Date – Regular Meeting October 26, 2009

Chair Mellon asked if the Board thought they should postpone the regular Board meeting of October 26, 2009.

Mr. Bewley remarked that he will be away from October 12 through November 1. He stated that he sent a notice to the Board in accordance with a Board resolution that Mr. Ed McCormick from EBMUD will be the acting Authority Manager during

his absence. Mr. McCormick will be authorized to take any necessary formal actions during this time. Mr. Bewley said that there are a number of things that may come up on the EBMUD Distribution System Phase 2 3 4 Project, such as the acquisition of a lease for some staging area property.

Mr. Bewley proposed November 16, 2009 for a special Board meeting.

Director Coleman said he will have to teleconference again and requested a start time of 6:30 p.m. for this meeting.

Chair Mellon confirmed the special Board meeting for November 16, 2009 at 6:30 p.m. A Closed Session will also be included on the agenda to start after 6:45 p.m.

10. BOARDMEMBER ITEMS

Director Coleman thanked Authority Secretary Nancy Hatfield for making the arrangements for the teleconference.

11. ADJOURNMENT

Chair Mellon adjourned the meeting at 7:24 p.m.

Submitted by,

Nancy Gamble Hatfield
Authority Secretary