

**DSRSD • EBMUD RECYCLED WATER AUTHORITY
(DERWA)
Board of Directors Regular Meeting Minutes
Monday, June 22, 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 6:02 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, Director John Coleman, and Director Daniel Scannell. DERWA Staff present: James Bewley, Authority Manager; Richard Lou, Treasurer; Nancy Gamble Hatfield, Authority Secretary.

4. SPECIAL ANNOUNCEMENTS/ACTIVITIES

Chair Mellon announced that Andy Katz will no longer be serving as an alternate for the DERWA Board. EBMUD has appointed Director Katy Foulkes to be the alternate.

5. PUBLIC COMMENT – 6:04 p.m. – None received.

6. APPROVE MINUTES – Regular Meeting of *April 27, 2009*

Motion by Director Scannell, Second by V.C. Hansen to approve the minutes from the regular meeting of April 27, 2009.

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

AYES: Scannell, Hansen, Coleman, Mellon
NOES:

7. CONSENT CALENDAR

A. Treasurer's Reports – April 30, 2009 and May 31, 2009

Motion by V.C. Hansen, Second by Director Scannell to approve the Consent Calendar.

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

AYES: Hansen, Scannell, Coleman, Mellon
NOES:

8. BOARD BUSINESS

A. Authorize Increase of Local Share Contribution for Pump Station R200A/Pipeline Segment IH and EBMUD Distribution System Phases 2, 3 & 4 Projects

Authority Manager Bewley reported that DERWA received a letter request from the U.S. Army Corps of Engineers (USACE) for an increase in DERWA's local share funds to cover DERWA's share of approximately \$1 million in change orders and claims proposed by the contractor.

These change orders are currently being negotiated between the contractor and USACE. Mr. Bewley expressed how this request came as a complete surprise to DERWA. He has been trying without success for several months to obtain information from USACE regarding claims the contractor has submitted and their review status. Mr. Bewley commented that with a pipeline project of this size there would likely be unforeseen conditions resulting in extra costs, but not in the magnitude the contractor has claimed. Mr. Bewley will be meeting this week with USACE and EBMUD's Ed McCormick to address several issues. Mr. Bewley is interested in where USACE spent extra money and how they came up with a \$1 million in pending claims unknown to DERWA.

Mr. Bewley explained that the request before the Board tonight, for an increase in the local share contribution, does not include any local share funds for these pending contract change orders. A special Board meeting may be needed before the next regular meeting in August to address this matter. Currently staff is unable to determine if the requested change orders are legitimate costs.

Director Coleman asked Mr. Bewley to clarify the amount of pending change orders against the contract amount.

Mr. Bewley responded that \$4.6 million is the contract amount and USACE has stated they have change orders pending for over \$1 million. The slow progress of work on this project has been very difficult for the City of San Ramon and DERWA. There were two major contract milestone dates, one on August 22, 2008, when the pipeline work was scheduled to be completed, and the other in mid-May 2009, when all the work and the Pump Station was scheduled to be done. One of the significant questions for USACE is how they plan to deal with contract provisions of \$2,900 per day for liquidated damages. Mr. Bewley emphasized how difficult this project has been to complete and noted that the Pump Station is a long way from being finished. The contractor reports approximately 10 to 12 days will be needed to complete the pipeline installation, but progress has been very slow.

Director Coleman asked what justification is being given for why the contractor is moving so slowly.

V.C. Hansen pointed out that during this discussion there is no legal counsel present; therefore comments from the Board need to be prudent.

Mr. Bewley responded that the contractor has never submitted an acceptable schedule, nor has DERWA seen any documentation relating to the delays or claims. He hopes USACE now recognizes DERWA's role in this process. USACE's legal counsel is now involved, so Mr. Bewley is optimistic they will agree to the terms stated in the Project Cooperation Agreement, where a very clear role for the local sponsor is described. The agreement states that USACE is obligated to advise DERWA and consider the local sponsor's opinions on contract changes and claims.

Chair Mellon suggested that a more in-depth discussion should take place at another Board Meeting with General Counsel in Closed Session.

Motion by Director Coleman, Second by Director Scannell to adopt Resolution No. 09-3 authorizing an increase of the local share cash contribution for Pump Station R200A/Pipeline Segment IH and EBMUD Distribution System Phases 2 3 & 4 Projects.

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

AYES: Coleman, Scannell, Hansen, Mellon

NOES:

B. Approve Task Order No. 2 and Task Order No. 3 with Alexander & Associates for Survey Work for EBMUD Distribution System Phases 2, 3 & 4 Project

Authority Manager Bewley stated that this item relates to the remainder of the Water Resources Development Act (WRDA) funded USACE work, which is currently under design by EBMUD. In the middle of last year, with the appropriations that had been made towards the \$15 million WRDA authorization, there were sufficient funds to do the Pump Station R200A/Pipeline IH project, which is currently under way. The project will produce assets that will primarily belong to DERWA as part of its backbone system. The next project had approximately \$2 million of WRDA funds for continuing the EBMUD distribution pipeline from Bollinger Canyon going north, the EBMUD Distribution System Phase 2 3 4 project. During late 2008 and spring 2009, Congress appropriated additional funds to the DERWA project and there now is \$9 million to \$10 million in funds available for that project.

DERWA's total appropriations are now about \$14.5 million. To qualify for the latest increase in funding, the next project needs to be bid and under contract by December 2009. With the recent increase in funding, this is now a much bigger construction project with very tight time constraints. EBMUD is now looking for a consultant to help with the pipeline design. Together, DERWA and EBMUD are working toward having the project awarded in December through USACE.

Director Coleman noted that the EBMUD Board has this item on their June 23, 2009 agenda.

Mr. Bewley explained that because of time constraints he has already authorized Task Order No. 1 with Alexander & Associates to begin survey work. He then reviewed the pipeline alignment shown on the maps included in the agenda packet.

The project includes design and construction of 4.9 miles of distribution pipelines to serve the Bishop Ranch Business Park and an area north of Bollinger Canyon Road to Crow Canyon Road in San Ramon (Phase 2); 7.3 miles of pipeline on Dougherty Road to Crow Canyon Road to Camino Tassajara Road in San Ramon and Danville (Phase 3); and 1.4 miles of pipeline on Camino Tassajara, Blackhawk Drive, and Deer Way in Danville (Phase 4).

Mr. Bewley recommended the Board approve Task Orders Nos. 2 and 3 for survey work to support EBMUD's design work. Mr. Bewley noted there is a change in the request amount for Task Order No. 2 from \$74,250 to \$104,250. This additional money will only need to be used if the City of San Ramon prevails in their request to relocate the pipeline alignment on Crow Canyon Road. This will require some additional survey work which represents the changed request amount for Task Order No. 2.

Chair Mellon asked Mr. Bewley to clarify which phase is attached to which task order.

Mr. Bewley responded that Task Order No. 2 is for Phase 3 work in an amended amount of \$104,250 and Task Order No. 3 is for Phase 4 work.

Motion by V.C. Hansen, Second by Director Coleman to approve Task Order No. 2 and Task Order No. 3 in the amounts of \$104,250 and \$11,000 respectively, with Alexander & Associates for Survey Work for EBMUD Distribution System Phases 2 3 & 4 Projects.

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

AYES: Hansen, Coleman, Scannell, Mellon

NOES:

9. MANAGER'S REPORT

- Work Plan Developing Long Term Debt Alternatives – Treasurer Richard Lou gave a PowerPoint presentation on developing a work plan for DERWA's long-term debt alternatives. DERWA has been paying very low rates on their debt over the past several months. Currently, DERWA has \$46 million in commercial paper outstanding and has the ability to go up to \$50 million. The Commercial Paper Program resets every 90 days. At this time, DERWA is making very low, about 0.3%, interest payments and this has been advantageous to continue. However, on January 10, 2010, the J.P. Morgan Letter of Credit, backing DERWA's Commercial Paper Program will expire. Currently, DERWA pays 0.15% for the Letter of Credit backing the \$50 million commercial paper debt, or approximately \$70,000 per year. DERWA had a three-year agreement on this financing. Since the commercial markets have become unsettled, it is estimated the cost of the Letter of Credit will increase to as high as 2.0%, resulting in fees possibly as high as \$1 million per year.

The other outstanding debt DERWA has is the \$24 million State loan. The interest payments for this are low at 2.5% with the loan repayment terms over 20 years with annual payments of \$1.6 million per year. This includes interest and principal.

The future alternatives to the Commercial Paper Program are:

- DERWA could stay with the Commercial Paper Program. The interest rates for commercial paper have historically been lower than fixed debt. DERWA could renew the Letter of Credit but that would probably be very expensive.
- DERWA could rollover the debt to a fixed rate debt. To do this would probably allow DERWA to issue debt at approximately 5.2% over 30 years. DERWA would have to pay back both principal and interest. That would result in payments of about \$2.6 million per year. He discussed a possible DERWA bond issue supported by the Member Agency Sales Agreement. Each Agency could agree to a "step up" provision whereby if one agency was unable to make the debt payments the other agency would step up and make the payments for the other agency. This would require negotiations between the Member Agencies and make the DERWA bond more marketable with a lower interest rate.

Mr. Lou asked the Board if they would be interested in having financial advisors come to the August Board Meeting to give the Board information on what it would take to put these options into effect.

Director Coleman asked what the highest commercial paper rates were historically and if they were linked to inflation.

Mr. Lou responded that today rates are unbelievably low and they are indeed linked to inflation. With regard to commercial paper, a large corporation has cash that they need to place for a short while and they are willing to take a relatively low interest rate in return for a safe investment. The long-term average interest DERWA has paid on commercial paper has been about 2.5%

Director Coleman asked if there is a cap on how high commercial paper can go.

Mr. Lou noted there was no cap, but last year commercial paper did go as high as 5%. He told Director Coleman that he did not have precise historical data available but could get back to the Board with the information. Financial advisors would also be able to provide this type of information.

Director Coleman asked if DERWA were able to do the bond and the step up provision, how much lower the interest rate might be versus the 5.2% estimate.

Mr. Lou said it would be a little bit lower, maybe a few tenths of a percent, since it gives DERWA a stronger rating in terms of marketing the loan to investors.

Mr. Bewley pointed out that 5.2% is what the interest rate is likely to be in today's market. At the moment DERWA is paying fees and commercial paper interest of less than .05%. However, this rate is not expected to continue. Fees are expected to increase up to 2% and commercial paper interest will increase with inflationary pressure.

Mr. Lou discussed the possibility of not having a buyer for the commercial paper and possible effects. Currently, the Letter of Credit states that if DERWA cannot sell the paper the bank will buy it, but at a much higher interest rate.

Director Scannell suggested that DERWA could possibly get some financing competition among lenders. He gave the example of getting a house refinanced. He also suggested DERWA look at varying financing time frames. Director Scannell voiced his support for a fixed rate. He felt that the global financial situation may get worse.

V.C. Hansen agreed with Director Scannell's comments and that the Board would be remiss if it did not find out what the market could make available and at what cost. He agreed DERWA should bring in some experts for advice in August to discuss what is available, prior to making a decision.

Chair Mellon concurred that the Board should bring in some financial experts in August. He recalled a bond situation at EBMUD where they were able to buy back their bonds and re-issue them at a much lower cost.

Chair Mellon asked the Authority Manager to have a presentation by a financial advisor on the financing alternatives in August.

- Contracts Initiated Since the Board Meeting of April 27, 2009 - Mr. Bewley approved the Alexander & Associates Survey Agreement for EBMUD Distribution System Phase 2 as noted earlier, and tonight the Board approved Task Orders Nos. 2 and 3 to that agreement.
- Pump Station R200A/Pipeline IH Project Update – A firm completion date is unavailable at the present time.
- Confirm Next Meeting Date – The next regular meeting date is August 24, 2009. Mr. Bewley said that a special Board meeting may be necessary to discuss projects or credit matters.

10. BOARDMEMBER ITEMS

V.C. Hansen commented that unfortunately DSRSD and LAVWMA have lost Director Thomas W. Ford, who passed away June 4, 2009. Director Ford never served on the DERWA Board. The DSRSD Board has decided to fill his vacancy by appointment rather than election. V.C. Hansen stated that he will miss Director Ford who was an interesting character and who served both the DSRSD and LAVWMA Boards well. He suggested the Chair adjourn the meeting in memory of Director Ford.

Director Coleman said he was surprised to hear of Director Ford's death and that he had not read or heard about it.

Chair Mellon noted how hard it is to lose a friend and colleague and extended his sympathies to the DSRSD and LAVWMA Boards, and said he would like to mention this at the EBMUD Board meeting the next day.

11. ADJOURNMENT

At 6:36 p.m. Chair Mellon adjourned the meeting in memory of former Dublin San Ramon Services District Director Thomas W. Ford.

Submitted by,

Nancy Gamble Hatfield
Authority Secretary