

**DSRSD • EBMUD RECYCLED WATER AUTHORITY
(DERWA)
Board of Directors Special Meeting Minutes
Monday, July 13, 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 6:01 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; Robert Maddow, General Counsel; and Nancy Gamble Hatfield, Authority Secretary.

4. PUBLIC COMMENT – 6:03 p.m. – None received.

5. BOARD BUSINESS

A. Authorization of Increase in Local Share Funds for PSR200A/Pipeline IH Project

Authority Manager Bewley stated that at the June 22, 2009 regular meeting the Board approved an increase in the local share funding. Since that approval, the U. S. Army Corps of Engineers (USACE) has found an error in their accounting. They first thought the local share imbalance was \$76,000 but later found it to be \$228,326. Therefore, work has essentially stopped on the pipeline project. Mr. Bewley emphasized the importance of getting funding in place for the timeliness of the project, which is the reason for the special Board meeting.

Mr. Bewley acknowledged members of USACE staff present in the audience and said they were available to answer questions. Mr. Bewley said the recommendation from EBMUD and DERWA is to approve the full request of \$608,201 in the letter dated June 29, 2009, even though the basis for the amount requested includes \$872,000 in potential contactor claims, much of which DERWA believes to be invalid. Mr. Bewley said that if the project closes out with funds remaining they will go into the next phase of the EBMUD Distribution Project. He said that there is no risk to the funds, it is just a timing issue.

Chair Mellon asked the Board if anyone had questions for any of the USACE personnel present.

Director Coleman asked about the change orders, noting that these were huge amounts. He asked what sort of oversight was taking place to avoid the waste of money.

Chair Mellon asked the Army representatives in the audience to identify themselves. The representatives included: Jay Kinberger, Chief of Branch for the San Francisco District Corps of Engineers Project Management Division; Clare Polansky, Project Manager for the San Ramon Valley Recycled Water Program, and Major David

Kaulfers, Assistant to the Deputy for Program Management.

Mr. Bewley stated that as a result of recent Project Cooperation Meetings, and with Jay Kinberger's assistance, he is beginning to get information on the contractor's claims.

Mr. Bewley stated that Mr. Kinberger had assisted him in setting up a meeting with a group of people at a higher level of authority and with USACE Legal Counsel, where the question of DERWA's role in regards to the claims was addressed. At this point, there has not been enough time to do an evaluation. There continues to be an ongoing struggle with the timing of the project. The contractor had a completion date for the contract of mid-May 2009. The work has gone significantly beyond schedule. Mr. Bewley noted that while there have been several changes to staff at USACE since the project began, EBMUD's Florence Wedington and he have both been working on the project since the beginning, a factor that might be helpful in resolving some of the issues.

Chair Mellon encouraged the staff of USACE to take advantage of the expertise of the DERWA and EBMUD personnel. He pointed out that this is a wonderful project. He stated his appreciation for all the efforts USACE has made. He also pointed out that money saved on this project will allow for more projects at a later date, which benefits all agencies.

V.C. Hansen commented that he had some understanding of the financial imbalances. However, he would like to see the issue of the change orders and the evaluation process of the claims addressed in Closed Session.

General Counsel Maddow stated that a contractor's claim of this type may allow the DERWA Board to consider these items in Closed Session, as a function of the litigation exception to the Brown Act.

Motion by Director Scannell, Second by Director Coleman to approve Resolution No. 09-4 authorizing increase of Local Share Contribution for Pump Station R200A/Pipeline Segment IH construction and EBMUD Distribution System Phase 2 3 4 Project design review projects.

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

AYES: Scannell, Coleman, Hansen, Mellon

NOES:

Director Scannell thanked USACE personnel for attending the meeting.

Chair Mellon noted that this was a good opportunity and the Board would appreciate USACE staff comments.

Mr. Kinberger thanked the Board for the opportunity to come and participate in the process and for their interest in USACE perspective. Mr. Kinberger noted that Mr. Bewley had highlighted some very important issues. He felt that USACE has not communicated effectively with DERWA in the past. He said he felt that both USACE and Mr. Bewley had made great strides in the last couple of weeks to set up a new way of

doing business with DERWA and his goal is to be as transparent as possible in terms of communicating accurate information and receiving feedback. He said he would like to receive the benefit of Mr. Bewley's expertise and the resources EBMUD and DSRSD have to offer. He is hoping that in areas such as Chantrella, where in the past USACE did not share information with DERWA as they should have, that USACE will now share information and use Mr. Bewley's expertise by bringing DERWA into the decision-making process. In this way, he hopes for an equitable solution for all parties, making sure that USACE is following due diligence. He stated that as a federal agency they have to follow the Federal Acquisition Regulations, which means that some of their decisions would be different from decisions made in the private sector.

Mr. Kinberger then introduced Major Kaulfers, who had just joined the team after serving in the National Guard in Virginia. He said that Major Kaulfers is a transportation engineer coming to the District to do some programmatic oversight of some of the computer software processes.

Major Kaulfers spoke of his previous experience and qualifications as an engineer with the Virginia Department of Transportation and said he was happy to be with USACE and is planning to work with them for at least two years.

Chair Mellon thanked the members of USACE for coming and for their comments. He noted that their comments showed they had an appreciation of DERWA's concerns and he appreciated USACE's willingness to look for ways to work through them.

B. Approve Amendment to FY2009-10 DERWA Budget Adding \$500,000 to the Pump Station Phase 2 Project and Authorization to Transfer \$500,000 from Future Contingency to Pump Station Phase 2 Project Construction Element

Motion by Director Coleman, Second by Director Scannell to approve Amendment to FY2009-10 DERWA Budget Adding \$500,000 to the Pump Station Phase 2 Project and Authorization to Transfer \$500,000 from Future Contingency to Pump Station Phase 2 Project Construction Element.

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

AYES: Coleman, Scannell, Hansen, Mellon

NOES:

14. ADJOURNMENT

Chair Mellon adjourned the meeting at 6:19 p.m.

Submitted by,

Nancy Gamble Hatfield
Authority Secretary