

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

**Board of Directors Regular Meeting Minutes  
Monday April 26, 2010**

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

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1. CALL TO ORDER – Chair Mellon called the DSRSD • EBMUD Recycled Water Authority (DERWA) meeting to order at 6:00 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 Richard Halket and Director John Coleman. DERWA Staff present: James Bewley, Authority Manager; Richard Lou, Treasurer; Robert Maddow, General Counsel; and Nancy Gamble Hatfield, Authority Secretary.

4. BOARD REORGANIZATION

A. Election of Board Chair

Motion by Director Coleman, Second by Chair Mellon to elect V.C. Hansen as DERWA Board Chair for 2010. Motion carried (4-0) by the following vote:

AYES: Coleman, Mellon, Halket, Hansen

NOES:

Director Mellon handed the gavel to Chair Hansen to continue running the business of the meeting.

B. Election of Board Vice Chair

Motion by Director Halket, Second by Director Mellon to elect Director Coleman as DERWA Vice Chair for 2010. Motion carried (4-0) by the following vote:

AYES: Halket, Mellon, Coleman, Hansen

NOES:

C. Appointment of Secretary

Motion by Director Mellon, Second by Director Halket to appoint Nancy Hatfield as DERWA Secretary for 2010. Motion Carried (4-0) by the following vote:

AYES: Mellon, Halket, Coleman, Hansen

NOES:

5. SPECIAL ANNOUNCEMENTS/ACTIVITIES – None received.

6. PUBLIC COMMENT – 6:02 p.m. – None received.

## 7. APPROVE MINUTES – Special Meeting of December 14, 2009

Motion by V.C. Coleman, Second by Director Mellon to approve the minutes from Special Meeting of *December 14, 2009*. Motion carried (3-0-1) by the following vote:

AYES: Coleman, Mellon, Hansen

NOES:

ABSTAIN: Halket

## 8. CONSENT CALENDAR

In response to a question from V.C. Coleman regarding DERWA's cash balance, Treasurer Lou reported that negative amounts resulted from invoicing issues and one DSRSD check for approximately \$500,000 that was not posted to the correct account. Mr. Lou also reported the negative cash balance resulted from the timing of EBMUD's payment of invoices and billing Member Agencies. EBMUD is revising invoicing procedures to the Member Agencies to maintain a positive cash balance.

A. Treasurer's Reports – Treasurer's Reports for December 31, 2009, January 31, 2010, February 28, 2010 and March 31, 2010

B. Quarterly Investment Report – December 31, 2009

C. Approve Task Order No. 7 for Fiscal Year 2010-11 for Public Information Services with Jones & Stokes Associates

Motion by Director Mellon, Second by Director Halket to approve the Consent Calendar. Motion carried (4-0) by the following vote:

AYES: Mellon, Halket, Coleman, Hansen

NOES:

## 9. BOARD BUSINESS

A. Transmittal of the DERWA Independent Auditor's Report and Financial Statements for Years Ending June 30, 2009 and 2008

Authority Manager Bewley stated the Boardmembers had received two items: the Independent Auditor's Report from June 30, 2009 and 2008, which was prepared in the fall of 2009, and the Management's Discussion and Analysis. No findings were reported by the auditors, nor any discrepancies or issues reported, and the audit was unqualified.

V.C. Coleman commented that Maze & Associates had served as DERWA's auditors for the past three years, and asked how long their contract would be in effect.

Treasurer Lou stated that DERWA does not have a direct contract with Maze & Associates. Instead, the audit is performed by EBMUD's auditor, which currently has a five-year contract.

Motion by V.C. Coleman, Second by Director Mellon to accept the DERWA Independent Auditor's Report and Financial Statements for Years Ending June 30, 2009 and 2008. Motion carried (4-0) by the following vote:

AYES: Coleman, Mellon, Halket, Hansen

NOES:

B. Approval of Bond Counsel Agreement with Sidley Austin LLP and Direction to Execute Said Agreement

Authority Manager Bewley stated this is a continuation of the DERWA effort on joint financing of the \$50 million debt, now secured by Commercial Paper. Last year, DERWA used Fullbright & Jaworski as the Bond Counsel, and Montague DeRose as Financial Advisors. Both firms are now, and were at the time, also EBMUD's Bond Counsel and Financial Advisors.

Mr. Bewley reported that while the Member Agencies were in agreement on the direction of refinancing, it was determined that it would be most efficient to refrain from engaging separate bond counsel and financial advisors. However, near the end of the year, it became obvious that there was a significant difference of opinion among the Agencies over the key feature of the joint financing – the step up provision. An impasse was reached during discussions of the step up provision, which resulted in a communication between Director Hansen from DSRSD's Board, and EBMUD's Board President Linney. Thereafter, a set of principles for joint financing was adopted by the Board of Directors of EBMUD and DSRSD, beginning a new joint financing effort.

Mr. Bewley stated that the major effort at the end of 2009 was to extend the Letter of Credit. In part, the Commercial Paper interest rate is very low because it is backed by a Letter of Credit issued by JPMorgan. Two and a half years ago, the Letter of Credit was extended through January 2010. When it became clear the refinancing was not going to be completed by that date, an extension to the Letter of Credit became necessary.

Mr. Bewley further explained that once it was known that refinancing would not be completed by May 2010, DERWA needed to get an additional extension on the Letter of Credit with JPMorgan. To do that, DERWA needed a bond counsel and financial advisor to assist. Sidley Austin was recommended as Bond Counsel. DERWA staff met with them, and Sidley Austin was acceptable to both Member Agencies. There was a more formalized selection process in choosing the Financial Advisor. A Request for Qualifications was sent out, which resulted in the receipt of six proposals. Following the review, the consensus of the financial team was Bartle Wells. The contract amount was within the authority of the Authority Manager to approve.

Mr. Bewley reported that the agreement with Sidley Austin has two components: the preparation of the Preliminary Offering Statement, and preparation of documentation, including a new trust indenture or a supplement to the existing trust indenture to govern the issuance of bonds, as well as, if requested, any amendments to the Agreement for the Sale of Recycled Water. The cost estimate for preparing the Preliminary Offering Statement is \$50,000. If the decision is made to proceed with an actual financing, the work for document preparation is estimated at \$25,000. The agreement, as written, has a \$75,000 cap, billable on a time and expenses basis. If the refinancing process is stopped prior to refinancing, the cost will be less than \$75,000. The recommendation is to approve the selection of Sidley Austin as Bond Counsel and authorize execution of an agreement.

Motion by Director Halket, Second by Director Mellon to approve Resolution No. 10-1 to approve the Agreement between DERWA and Sidley Austin LLP as Bond and Disclosure

Counsel, and directs the Authority Manager to execute said Agreement. Motion carried (4-0) by the following vote:

AYES: Halket, Mellon, Coleman, Hansen

NOES:

C. Amendment No. 3 to Letter of Credit and Reimbursement Agreement with JPMorgan Chase Bank, National Association

Authority Manager Bewley explained that in the fall, during negotiations leading up to the December extension of the Letter of Credit (LOC), JPMorgan proposed amendments which, if left in place, could have had a negative cost impact on DERWA. Montague DeRose were able to have those provisions deleted. Originally, the Amendment contained the provision that the fee scale for cost of the LOC would increase if either Member Agency's credit rating changed. The amendment to the Letter of Credit that was adopted included a fixed fee of 120 basis points for the term of the amendment. The proposed Amendment No. 3, if approved, changes only the expiration date, from May 2010 to May 2011. During recent discussions, it was determined that JPMorgan was not enthusiastic about short extensions and, based on the existing options available, the decision was made to stay with the 120 basis points as a fixed rate over the term. No early withdrawal penalty is included in the amendment.

Chair Hansen asked if the issuance fee was prorated. Mr. Bewley stated the fee for Letter of Credit is 120 basis points on the full amount of the LOC, billed quarterly. Treasurer Lou added that the quarterly billings are done in arrears, and if the contract were canceled one month into the quarter, the next billing period would only show one month of charges.

Director Halket asked if the 120 basis points were charged only on utilized credit, or on the entire program. Mr. Bewley responded that charges are on the amount of the Letter of Credit, which is currently \$54 million. There are actually two fees: one for the amount of credit being used, and one for the amount of credit not being used. In DERWA's Letter of Credit, both fees are set at 120 basis points. Under the current Letter of Credit, DERWA pays 120 basis points on the \$50 million Letter of Credit, plus a percentage markup: a total of \$54 million. Once this amendment is in place, DERWA has an opportunity to approach JPMorgan to determine their willingness to lower the \$54 million cap. Last year, in very preliminary discussions, JPMorgan was not interested in a smaller issue.

Director Halket also asked about the terms of access to this program.

Mr. Bewley stated the program could only be used for specified assets that DERWA built, and at this time, there is no clear answer regarding whether or not one Member Agency can pay down more debt than another Member Agency. Mr. Bewley stated that this seems to be a sensitive issue and that refinancing is limited to paying existing DERWA debt.

Director Halket stated that he understands that starting May 20, 2010, DSRSD will be paying the full 120 basis points, and if there is a way to make life better for DSRSD under this contract, he would like to explore that option.

Mr. Bewley concluded by saying the 120 basis points, which is 1.20%, is the Letter of Credit fee. Mr. Lou added that the Commercial Paper interest is currently down near 0.3%. When added together, this is a fairly attractive rate; however, it is not secured or long term.

Motion by Director Mellon, Second by Director Coleman to approve Resolution No. 10-2 to approve the Amendment No. 3 to Letter of Credit and Reimbursement Agreement with JPMorgan Chase Bank, National Association. Motion carried (4-0) by the following vote:

AYES: Mellon, Coleman, Halket, Hansen

NOES:

#### D. Approval of Fiscal Year 2010-11 Budget

Authority Manager Bewley reported the FY 2010-11 Budget was included in the Board agenda packet. He highlighted a couple of changes. For example, in the Summary of the Operating Budget on page 5, the amount on the Treasurer line is decreasing by \$274,000 because it was expected that DERWA would have secured a bond financing by the next fiscal year. If DERWA stays with the Commercial Paper Program and does not secure bonding financing, the Debt Service line amount will decrease and the Treasurer line amount will increase because of the source of the money.

In addition, Mr. Bewley pointed out that the Debt Service significantly increased because DERWA planned on moving into a fixed rate, 30-year debt, increasing the cost from the interest-only financing at 1.5% per year, to a 4.5% per year for the fixed rate including principal. The DERWA Operations Table 11, on page 8, shows the cost of operating the WWTP and the transmission and storage system. For the current year, \$1.5 million was budgeted, and it is estimated that approximately \$1.2 million of that will be spent because of problems with delivery of recycled water to one very large customer, Bridges Golf Course. The problems occurred at the height of the irrigation season when the golf course, which typically uses about one million gallons of recycled water a day, received potable water as a substitute. This resulted in a large volume of recycled water that was not sold this past summer.

In the Capital Section on page 14, Mr. Bewley mentioned the Pump Station R200 project which should have been done a year ago, but was still underway. He mentioned that EBMUD's Distribution Pipeline Phases 2 3 4 is utilizing the remainder of the original WRDA \$15 million authorization. For these projects, EBMUD is doing the design work. That money is not local cost share, in-kind-service money, but rather money EBMUD must spend. Since EBMUD does not have to spend WRDA money on US Army Corps of Engineers (USACE) performing the design work, there is more money remaining for construction.

Mr. Bewley noted DERWA has negotiated with USACE for EBMUD to provide the Resident Engineer and Construction Inspector services the project. USACE staff will complete the USACE paperwork and a Memorandum of Understanding has been negotiated. The first phase has been advertised and awarded to contractor Jonas and Associates, from Martinez. The Engineer's Estimate for that work was approximately \$7 million, and the bid was \$3 million. The budget amount reflects a \$900,000 payment this fiscal year for the local share of the WRDA funds. EBMUD design services and construction management services were not shown in the DERWA budget.

Motion by V.C. Coleman, Second by Director Halket to approve Resolution No. 10-3 to approve Fiscal Year 2010-11 Budget. Motion carried (4-0) by the following vote:

AYES: Coleman, Halket, Mellon, Hansen

NOES:

#### 10. MANAGER'S REPORT

- Contracts Initiated Since the Board Meeting of December 14, 2009
  - Montague DeRose & Associates – Financial Advisory Services – Not to Exceed \$25,000 – Authority Manager Bewley explained that this contract was initiated in January 2010, and was written not to exceed \$25,000. In the first month, approximately \$10,000 was spent, and the work under this contract is now completed.
  - Sunset Development Construction Easement Term Extension – \$2,000/Month for 24 Months – Mr. Bewley explained there is an easement agreement with Sunset for the construction staging area for the first USACE project. DERWA was required to find a staging area for the EBMUD projects. The search for a staging area covered a very wide area; however, no site was found that could be used for that purpose. Sunset offered the staging area property for this new work. The City of San Ramon and Contra Costa County would not issue use permits for any other suggested sites.
  - Bartle Wells Associates Financial Advisory Services – Not to Exceed \$50,000 – Mr. Bewley indicated the contract is moving forward with both the Letter of Credit and refinancing.
- EBMUD Distribution System Phase 2 3 4 Projects Update – The first project is Phase 3 and 4, which is at the upper end the EBMUD system in Blackhawk and Danville. It was scheduled first because Danville has stimulus money that will be used for road reconstruction, and they want the street work completed before they repave the roads. Currently, DERWA does not have an agreement with San Ramon regarding what an encroachment permit would contain. The next project that could go out to bid is Phase 2B, which will be the connections out from Bollinger and the section down Alcosta going north from Bollinger. Phase 2A will be the remaining project in Bishop Ranch.
- Confirm Next Meeting Date – June 28, 2010 – Mr. Bewley indicated the next regularly scheduled DERWA Board meeting beyond the June 28 meeting will be August 23, 2010. One or both of those meetings should be needed, along with a potential special meeting if something comes up in regard to financing.

#### 11. BOARDMEMBER ITEMS

V.C. Coleman expressed his pleasure at being able to attend the meeting in person rather than by teleconference.

Chair Hansen thanked Director Mellon for his wonderful job as DERWA Chair over the past year.

12. ADJOURNMENT

Chair Hansen adjourned the meeting at 6:32 p.m.

Submitted by,



Nancy Gamble Hatfield  
Authority Secretary