

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

**Board of Directors Special Meeting Minutes
Monday, December 14, 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 6:30 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 6:42 p.m. from teleconference location 165 Rudgear Drive, Walnut Creek, California.

4. SPECIAL ANNOUNCEMENTS/ACTIVITIES

5. PUBLIC COMMENT – 6:32 p.m. – None received.

6. APPROVE MINUTES – Special Meeting of November 30, 2009
Motion by Director Scannell, Second by V.C. Hansen to approve the minutes from the special meeting of *November 30, 2009*.

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

AYES: Scannell, Hansen, Mellon
NOES:

Chair Mellon thanked the Secretary for doing a great job of capturing the discussion at the previous Board meeting.

7. CONSENT CALENDAR

A. Treasurer's Report – Treasurer's Report for November 30, 2009
Motion by V.C. Hansen, Second by Director Scannell to approve the Consent Calendar.

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

AYES: Hansen, Scannell, Mellon
NOES:

Chair Mellon stated that the Board would wait to consider the Board Business until Director Coleman called into the meeting from the alternate teleconference location. He announced that the Board would move to address Item 10 from Board Member Items.

10. BOARD MEMBER ITEMS

V.C. Hansen commented that last week he had been "snowed in" up north and had been very pleased to have electrical power throughout the ordeal. He noted that many others in the area did not have electricity during the storm.

Chair Mellon stated that EBMUD was receiving an extraordinary amount of water as compared to some other districts.

Director Scannell wished everyone at the meeting as well as their families a happy holiday season! He expressed his appreciation for the patience and hard work that had gone into the work to prepare for tonight's meeting.

Chair Mellon agreed with Director Scannell that DERWA was fortunate to have such an extraordinary staff. He then asked Authority Manager Bewley if the December 28, 2009 Board meeting should be canceled.

Mr. Bewley suggested the Board cancel the December Board meeting but reserve January 25, 2010 for a tentative special meeting. There may be a need to hold a meeting sometime in the middle or latter part of January.

Director Coleman called in at 6:40 p.m. but was not yet a participating member of the Board since he had not arrived at the noticed teleconference location.

Chair Mellon summarized that he had moved the Board Member comments to an earlier time in the meeting and described what Director Coleman had missed. Chair Mellon noted that he had delayed the Board Business Items portion of the meeting until Director Coleman could participate in the meeting.

At 6:42 p.m. Director 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. 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.

Director Coleman wished everyone a great holiday and stated that he appreciated the letter DSRSD Director Hansen had sent to the EBMUD President and Board last week in advance of the EBMUD Board meeting.

Chair Mellon agreed with Director Coleman's remarks and commented that the letter had been very helpful in the discussion at the December 8, 2009 EBMUD Board meeting. Chair Mellon thanked Director Hansen and DSRSD General Manager Bert Michalczyk for their communication to the EBMUD Board regarding the DERWA refinancing matter.

8. BOARD BUSINESS

A. Authorizing the Execution of Amendment No. 2 to Letter of Credit and Reimbursement Agreement Relating to DSRSD • EBMUD Recycled Water Authority Recycled Water Program

Authority Manager Bewley stated that there had been some changes made to Amendment No. 2 to the Letter of Credit since the printing of the agenda. He noted that the Board and the public had the updated copy, which he distributed along with a sheet explaining the

changes. Mr. Bewley explained that under item (a) on page 2, section 3, titled "Amendments," the term "Applicable Rate" had been added to the first sentence, and before the paragraph beginning with "Bank Rate," the following phrase "'Applicable Rate' shall mean 0.012" was added. This document sets the new rate and term through May 2010. All the other provisions remain the same as in the current agreement. Mr. Bewley explained that the Board's approval of the resolution will allow completion of the closing documents and allow the Letter of Credit extension to be secured.

Chair Mellon restated that the document now clearly sets forth that the "Applicable Rate" means a percentage rate of 1.20%, which Ms. Poree negotiated on behalf of DERWA.

Mr. Bewley reiterated that this percentage rate is the cost of having the necessary Letter of Credit. In addition to this cost, there will be the interest rate on the Commercial Paper, which is currently still less than one-half of one percent. With the costs added together, it is still less than three-quarters of a percent for the total cost of debt service.

General Counsel Maddow went over the explanation of the modification to Amendment No. 2 for clarification. He noted that the amendment was made available to the public as required by the Brown Act and would be sent to Director Coleman by Mr. Bewley.

Ms. Poree offered to clarify the change and explained that in the current bank market, the term "down grade pricing" is used. The 120 basis points (1.20%) that JP Morgan initially offered assumed an AA rating for EBMUD and an A rating for DSRSD, based on the Member Agencies' credit. JP Morgan proposed that for each notch down from EBMUD's AA and DSRSD's A rating they would have added 5 basis points (0.05%), so if EBMUD or DSRSD had been down one notch and under the AA or A rating, there would have been an added cost. Because the rating for DSRSD was undefined, Ms. Poree believed it advisable to negotiate with JP Morgan to remove this condition, so the fixed rate for the Letter of Credit is now 120 basis points regardless of any material change in rating of the Agencies.

Mr. Lou stated that he wanted to clarify that if something unanticipated occurred and DERWA was not able to renew the LOC or refinance the CP debt, this new amendment does increase the rates DERWA would be charged. Mr. Lou remarked that he does not anticipate a problem, but wanted to point out to the Board that in addition to raising the fee, if something were to happen, the default rate is now a little higher than it was before.

Ms. Poree stated that such a problem would be driven by the health of the bank, e.g., if JP Morgan significantly deteriorated over the four month period. Based on bond counsel's opinion and what the Board approves tonight, they could still negotiate those rates further if the Board requested they do so. Montague Derosé continues to believe that JP Morgan is a very strong bank.

Motion by V.C. Hansen, Second by Director Scannell to approve Resolution No. 09-10 authorizing the execution of Amendment No. 2 to Letter of Credit and Reimbursement Agreement relating to DSRSD • EBMUD Recycled Water Authority Recycled Water Program, commercial paper notes, series A and other matters in connection therewith, including the change to the defined term in Section 3 (a), "Applicable Rate" and the phrase "'Applicable Rate' shall mean .012."

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

AYES: Hansen, Scannell, Coleman, Mellon

NOES:

B. DERWA Debt Financing Program Status Update

Authority Manager Bewley reported that the December 8, 2009 meeting, following a letter sent from DSRSD Board President Hansen to EBMUD President Linney, EBMUD Directors discussed further joint refinancing of debt with DSRSD. The EBMUD Board approved a motion to continue to pursue joint refinancing of the \$50 million debt and adopted five guiding principles proposed by DSRSD to shape future discussions. These five principles will be discussed by the DSRSD Board on December 15, 2009.

With a consensus and action from both Boards, DERWA will proceed with discussions to get fixed rate joint financing that is acceptable to the two Member Agencies. Mr. Bewley has had several discussions with the General Managers of each Member Agency and feels positive about the EBMUD Board's response, and anticipated positive response from the DSRSD Board. There have been some preliminary discussions on how to proceed. In President Hansen's letter, he offered his services to convene a leadership group if needed. Mr. Bewley discussed this matter with DSRSD and EBMUD General Managers Michalczyk and Diemer. They agree that a group comprised of Mr. Bewley, the two Member Agency General Managers, and a Director from each agency should meet to get the discussions moving and then have the finance teams follow up with the next steps. They envision that the leadership group may meet once a month for approximately two or three months, during which time the finance team would put a finance package together.

Due to the make up of the DERWA Board, the leadership team should be an effort of both DSRSD and EBMUD in order to avoid encountering any Brown Act quorum issues. Mr. Bewley will work with both General Managers Michalczyk and Diemer on logistics.

Chair Mellon asked a question about Brown Act compliance.

General Counsel Maddow responded that a meeting between representatives of DSRSD and EBMUD is not necessarily a DERWA meeting but merely discussions between DSRSD and EBMUD. The topics touch on DERWA related issues, but the Boardmembers and General Managers will be representing their own agencies rather than DERWA. Two different decision making paths will be followed, with DERWA on the sidelines.

Chair Mellon asked for confirmation that the Board was being asked to approve the principles and to also give direction to move forward in seeking joint financing. The designation of the Boardmembers would be done by the Member Agencies.

General Counsel Maddow agreed that was correct.

Mr. Bewley stated that at the most recent DERWA Board meeting on November 30, 2009, staff was directed to go forward with a DSRSD-only financing option. Following the action of EBMUD's Board last week, and DSRSD's proposed action, DERWA staff would now

like to recommend that DSRSD go forward with their DSRSD-only financing and that DERWA focus only on the joint financing.

V.C. Hansen thanked Director Coleman and Chair Mellon as well as the other EBMUD Boardmembers and staff for keeping an open mind about the presentation. He expressed his appreciation for the vote of their Board and expressed his belief and hope that this will be a win-win situation. The leadership team is intended to assist at a policy level with difficult topics, but not to do the work of staff.

Director Scannell commented that this group would be something like an informal ad hoc committee.

V.C. Hansen suggested that if a Brown Act compliance issue should arise that they will deal with it appropriately.

General Counsel Maddow commented that his analysis of the Brown Act concerns is that the main reason for these discussions is to deal with processes leading to decisions and courses of action within each of the Member Agencies. The DERWA action comes after those Agency decisions. However, if this is to be a DERWA Committee of some sort, then this would require compliance with the Brown Act.

Chair Mellon asked Director Coleman if he had had a chance to read the recommendation.

Director Coleman concurred with the outline in DSRSD's Director Hansen's letter and thought this was a good idea. He also noted that if Mr. Maddow believed there were no Brown Act compliance issues he could support the process.

Chair Mellon asked if there was a motion.

Motion by Director Coleman, Second by Director Scannell to direct staff and financial consultants to initiate joint discussions with DSRSD and EBMUD management and financial staff to discuss the pros and cons for joint financing of DERWA debt.

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

AYES: Coleman, Scannell, Hansen, Mellon

NOES:

V.C. Hansen noted that the DSRSD Board will discuss this at their meeting tomorrow.

Director Coleman reported that his schedule is quite busy and he hoped that Chair Mellon's schedule would permit him to participate in discussions on behalf of EBMUD.

Chair Mellon will plan to communicate with Mr. Bewley about this once there is more to report after the January EBMUD Board meeting.

9. MANAGER'S REPORT

- Contracts Initiated Since the Special Meeting of November 30, 2009 – None
- Confirm Meeting Dates – Regular Meeting December 28, 2009 and

Special Meeting January 25, 2010 – The Board will cancel the Regular Meeting of December 28, 2009 and will schedule January 25, 2010 as a tentative meeting date.

Chair Mellon wished everyone a fine holiday season and a prosperous, healthy and happy 2010.

11. ADJOURNMENT

Chair Mellon adjourned the meeting at 7:04 p.m.

Submitted by,



Nancy Gamble Hatfield
Authority Secretary