

**DSRSD • EBMUD RECYCLED WATER AUTHORITY  
(DERWA)  
Board of Directors Regular Meeting Minutes  
Monday, February 23, 2009**

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

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1. CALL TO ORDER – Chair Scannell 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 Daniel Scannell, Vice Chair Frank Mellon, and Director Jeffrey Hansen. Director Andy Katz entered the meeting at 6:07 p.m. DERWA Staff present: James Bewley, Authority Manager; Richard Lou, Treasurer; Sharon Nagel, Attorney; and Nancy Gamble Hatfield, Authority Secretary.

4. BOARD REORGANIZATION

A. Election of Board Chair

Motion by Director Hansen, Second by Chair Scannell to elect Director Mellon as DERWA Board Chair for 2009. Motion carried (3-0) by the following vote:

AYES: Hansen, Scannell, Mellon

NOES:

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

B. Election of Board Vice Chair

Motion by Chair Mellon, Second by Director Scannell to elect Director Hansen as DERWA Board Vice Chair for 2009. Motion carried (3-0) by the following vote:

AYES: Mellon, Scannell, Hansen

NOES:

C. Appointment of Secretary

Motion by Director Scannell, Second by Director V.C. Hansen to appoint Nancy Gamble Hatfield as the continuing DERWA Secretary for 2009. Motion carried (3-0) by the following vote:

AYES: Scannell, Hansen, Mellon

NOES:

The Directors thanked Authority Secretary Hatfield for her continuing high quality service as Authority Secretary since the inception of DERWA in 1995.

Chair Mellon stated that the Board would go into the Closed Session portion of the meeting and then would move to the Board Business portion of the meeting.

## 5. CLOSED SESSION

At 6:04 p.m. the Board went into Closed Session.

*At 6:07 p.m. Director Andy Katz entered the Closed Session.*

- A. Conference with Legal Counsel to Consider Initiating Litigation – Pursuant to Government Code Section 54956.9(c)

## 6. REPORT FROM CLOSED SESSION

At 6:16 p.m. the Board came out of Closed Session. Chair Mellon announced there was no reportable action.

Chair Mellon stated for the record that Director Andy Katz was present this evening at the meeting as the Alternate for Director John Coleman.

Chair Mellon stated that the Board would move straight to Item 11 - Board Business.

## 11. BOARD BUSINESS

### A. Public Hearing: Consider Evidence Presented Relating to Acquisition of Real Property Interest by Eminent Domain

Chair Mellon noted that there was a speaker for this agenda item. He requested that the Board first receive a report from Authority Manager Bewley.

Mr. Bewley noted that this issue relates to a very small easement parcel that is 10' x 7'. This parcel would be an add-on to an existing easement obtained some years ago from Contra Costa County for the underground electric utility service to Pump Station R200A. The original design anticipated that an existing PG&E easement would be sufficient to provide this service. However, when the contractor made application to PG&E in the middle of 2008, PG&E identified that the existing easement is for overhead transmission lines and distribution service but it could not be used for an underground utility service to a private customer. DERWA is considered a private customer by PG&E.

DERWA staff contacted the property owner's representative, Pacifica Companies, and discussed the PG&E easement and that DERWA needed this parcel. Mr. Bewley explained that in anticipating the importance of timing, staff set up a parallel track of discussing a settlement with Pacifica Companies so that Pacific Companies could grant the easement directly to PG&E—which was PG&E's original request. In the event this effort was unsuccessful, staff needed the opportunity to acquire the property through eminent domain. Research showed that it was impractical to get an easement from Pacifica Companies to DERWA and then have DERWA transfer the easement to PG&E. Ultimately, the only way to get service to the parcel was for Pacifica to grant an easement to PG&E or for DERWA to acquire the fee title of the 10" x 7' parcel and then grant an easement to PG&E. That process began in mid-December 2008.

DERWA was to get an appraisal and make a formal offer to the property owner. The appraisal indicated the value of the 70 sq. ft. parcel at \$2,800, which was the basis for the offer made in early January 2009.

Mr. Bewley explained that eminent domain laws require that a reasonable amount of notice be given in advance of beginning the proceedings, for example a ten to fifteen day

period. If a favorable response to an offer is not received, then the agency may start the eminent domain proceedings. Proceedings are initiated by a notice to the property owner that a public hearing will be set to consider adoption of a Resolution of Necessity.

A public hearing notice was sent in late January, and then the notice was slightly revised in early February to give more specific description of the need for the underground utility easement. Mr. Bewley stated that DERWA is in compliance with noticing requirements for the eminent domain proceedings and that the property owner(s), if they want to, are required to notify the agency within fifteen days of the notice that they want to speak at the public hearing. That deadline was Wednesday, February 20, 2009. However, General Counsel advised that it would be best to afford Pacifica Companies the opportunity to speak to the Board about the matter, if desired.

Chair Mellon stated that offering the Pacifica Companies representative an opportunity to speak would enhance the record and give the Board an opportunity to understand some of their issues. He requested confirmation that what the Board was dealing with tonight was a Resolution of Necessity and not engaging in direct negotiations.

Mr. Bewley agreed this was correct. He stated that his recommendation to the Board is to approve the Resolution of Necessity. Subsequent action would be to have the attorney's office request and file an order of immediate possession with the court. This step would set the stage for the court to grant DERWA the authority to build the utility on the site needed and the court process would determine the final value of the property.

Chair Mellon asked Assistant General Counsel Sharon Nagel if it was correct that at any time Pacifica Companies and DERWA could enter into a settlement subsequent to adoption of the Resolution of Necessity.

Ms. Nagel confirmed that as correct.

Hearing no questions from the Board of Directors, Chair Mellon opened the public hearing up for testimony from the audience.

Chair Mellon stated that he had one speaker card for Shauna Pribyl from Pacifica Companies, representing San Ramon Reflections. He asked her to keep in mind that part of the purpose of the hearing was to hear objections to the facts supporting the Resolution of Necessity and that it is not a negotiation session.

Speaker: Ms. Shauna Pribyl stated that she had heard Authority Manager Bewley's comments and was not present at the meeting to negotiate. She commented that she and Authority Manager Bewley have had an open dialogue about the issues and that in the notice they received they were requested to respond specifically to four items. She pointed out that her firm did not receive the pamphlet listed under Government Code Section 7267.2 and she understood this was a required condition which was not met.

Ms. Pribyl stated that she was unclear about finding 3. of the resolution. The existing poles extend about 3' west from the property line while the proposed easement is 7'. She did not feel it was necessary to have the full 7' as stated under Condition C as "necessary for the project." She discussed the fact that extending the full 7' interferes with both

irrigation and electrical conduit that would then need to be moved at a cost to the partnership. Ms. Pribyl explained this was a concern.

Ms. Pribyl stated other concerns were addressed in a lengthy email sent to Authority Manager Bewley today and she was uncertain if they were addressed in the four items contained in the letter to her and how she could comment on any of them. She noted that one item of concern was the amount of the offer made by DERWA, but she explained she was not present to negotiate that.

Ms. Pribyl commented that she previously asked Mr. Bewley, and now was asking the Board, to give her company some additional time on this matter because she believed they were close to coming to a settlement. She also noted her understanding that construction is not due to begin for another six to twelve weeks. She requested that a reasonable time frame be established so the owner of the property could respond. Ms. Pribyl requested the Board either table this item or, if that was not possible, the attorneys hold off on filing the court order. She understood that once the Resolution of Necessity is adopted the court order will go into effect the following morning so ownership can occur that same day. Ms. Pribyl commented that this seems excessive when the two parties are so close to reaching a settlement.

Chair Mellon asked Ms. Nagel if there were any areas she wanted to respond to.

Assistant General Counsel Nagel said she would like to address the order of possession. She stated that it does not happen as quickly as Ms. Pribyl may think. Ms. Nagel said that she had helped prepare the offer package sent to Ms. Pribyl and she understood there was a Caltrans pamphlet included in the materials that described in basic terms the process of eminent domain.

Ms. Nagel explained what happens with an order of possession. She stated that the earliest DERWA could go into the property, barring any objections from the owner, would be approximately forty days. She explained that this legal process does not occur overnight and that the owner would receive a notice and has an opportunity to object. Ms. Nagel explained that none of the eminent domain proceedings prevent the owner and agency from negotiations and often proceedings happen concurrently. The eminent domain process requires notices be given and that statutory guidelines be met.

Ms. Pribyl reiterated that she felt that when two parties are so close to an agreement it would seem sensible to wait a reasonable amount of time so the parties can come to a resolution.

Ms. Nagle said there is nothing stopping that from happening.

V.C. Hansen made a point of order to Chair Mellon with respect to all the participants stating that the Public Hearing for testimony is not designed to be a question and answer period. V.C. Hansen confirmed that Ms. Nagel's comments were informational in nature and were not intended as legal advice and that Ms. Pribyl should seek her own legal advice, if desired.

Ms. Nagle agreed that was absolutely correct.

Chair Mellon thanked V.C. Hansen for the point of order.

Chair Mellon said he had taken notes on the main points. He asked if there was anything else Ms. Pribyl wanted to ask the Board.

Ms. Pribyl pointed out some additional issues in her email to Mr. Bewley. She said she and Authority Manager Bewley had previous discussions about what would actually happen in the field and she did not notice those concerns addressed in the agreement.

Chair Mellon felt that the Board had made an effort as a matter of courtesy to listen, and to give Ms Pribyl some of their thoughts. The Board did not want to discourage her from continuing to have conversations but they did need to move on to the main topic. He asked if Authority Manager Bewley had any further comments.

Mr. Bewley noted that the Caltrans notice was not submitted with the Notice of tonight's Hearing but was provided to Ms. Pribyl with the offer to purchase dated January 9, 2009.

Motion by V.C. Hansen, Second by Director Scannell to close the Public Hearing.

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

AYES: Hansen, Scannell, Katz, Mellon

NOES:

#### B. Consideration of Resolution of Necessity to Condemn Real Property

Chair Mellon stated that before the Board is a Resolution of Necessity to condemn real property. There are certain determinations and findings required for the Board to adopt the resolution. The first item is to find and determine that the notice of intention to adopt the resolution was duly given, and on the date and at the time and place fixed for the hearing the Board heard and considered all the evidence presented and all the interested parties were given an opportunity to be heard. Chair Mellon asked if there was any dispute with regard to this among Boardmembers.

Authority Manager Bewley noted that on February 2, 2009 there was an amended notice sent out that had a more detailed description of the use. That first notice sent January 21, 2009 did not specifically define that the easement was for the underground electrical utility. Both notices were sent within the timeframe allowed for the public hearing.

Chair Mellon noted that the second determination and finding is for the Board to find that the public interest and necessity require the proposed project.

Chair Mellon submitted for the record that this is a project many years in the making and that the Board has been reviewing the issues involved for over a year and a half. Mr. Bewley has been keeping the Board informed of the progress, and the Board has been reviewing the project and agrees that this is an integral part of the DERWA project.

Chair Mellon noted the third determination and finding is to find that the proposed public project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury. Chair Mellon stated that DERWA has had

extensive discussions with PG&E over the use of the Iron Horse Trail and the property itself and locations have been worked on for a very long time.

Authority Manager Bewley stated that this site and service have been in the process since the middle of 2006. He also noted that regarding the notation of the least private injury, the seven foot length referred to in the offer for the easement is what was prescribed by PG&E. DERWA facilities will not occupy the full 70 sq. ft. The facilities would be one pole and underground conduits connected to the pole. In the planning, DERWA would be responsible for any improvements that were impacted with this construction, i.e., fence removal and replacement. Staff does not believe that a pole will interfere with any landscaping or irrigation but if it did, DERWA would take responsibility to make that irrigation, piping or conduit serviceable.

Chair Mellon noted that the fourth determination is to find that the property sought to be acquired is necessary for the project. He stated that this determination was found and the offer was made in writing on January 9, 2009.

Chair Mellon asked if there were any other questions or issues to be raised by the Board after having reviewed the resolution of necessity and its findings.

Motion by V.C. Hansen, Second by Director Scannell to approve Resolution No. 09-1, adopting Resolution of Necessity to Condemn Real Property.

Mr. Bewley reported that he distributed a revised resolution from the version included in the agenda packet. He explained that the revised wording is more specific and non-material and is in the second "Whereas" clause. The "Whereas" clause now reads: "Whereas, the real property described herein is required for an underground electrical utility service line with surface improvements, which is part of a DERWA recycled water project."

V.C. Hansen AMENDED his MOTION to adopt the Resolution with the modified whereas to read: "Whereas, the real property described herein is required for an underground electrical utility service line with surface improvements, which is part of a DERWA recycled water project." Director Scannell AMENDED the SECOND to accept the change.

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

AYES: Hansen, Scannell, Katz, Mellon  
NOES:

Chair Mellon once again encouraged Ms. Shauna Pribyl to continue to have discussions with Authority Manager Bewley.

8. PUBLIC COMMENT – 6:37 p.m. – None received.

9. APPROVE MINUTES – Regular Meeting of *October 27, 2008*

Motion by Director Scannell, Second by V.C. Hansen to approve the minutes from Regular Meeting of October 27, 2008. Motion carried (4-0) by the following vote:

AYES: Scannell, Hansen, Katz, Mellon  
NOES:

V.C. Hansen asked if Chair Mellon would go back to Item 7 since it had been skipped. Chair Mellon concurred.

## 7. SPECIAL ANNOUNCEMENTS/ACTIVITIES – None.

Since the Consent Calendar had not yet been addressed in the meeting, Chair Mellon went on to this agenda item.

## 10. CONSENT CALENDAR

- A. Treasurer's Reports for October 31, 2008, November 30, 2008, December 31, 2008
- B. Quarterly Investment Report – December 31, 2008.
- C. DERWA Investment Policy and Delegation of Authority for the Management of the Investments to the Treasurer of the Authority

Motion by Director Scannell, Second by V.C. Hansen to approve the Consent Calendar. Motion carried (4-0) by the following vote:

AYES: Scannell, Hansen, Katz, Mellon  
NOES:

Director Katz departed from the meeting at 7:39 p.m.

## 12. MANAGER'S REPORT

- Contracts initiated since the Board Meeting of October 27, 2008
  - A License Agreement was entered into with EBMUD for the installation of a radio repeater at the EBMUD's Knife Reservoir. This work is part of the PS R200 project and the license was granted to DERWA at no cost.
  - An agreement was entered into with PG&E for distribution and service for installing the electrical underground service for the Pump Station R200A. DERWA has to pay for a significant portion of the work at approximately \$24,564. This was the subject under Board Business items earlier in the evening's meeting.
- Pump Station R200A/Pipeline IH Project Update –  
Mr. Bewley reported that this project continues to be a very difficult project, with a difficult contractor and managed by the Corps of Engineers, which adds a layer of complexity. Actual construction on the pump station started a few weeks ago. Some work was accomplished on the site before it began to rain in earnest. There have been a lot of challenges with this project, particularly in the area of communication with the Corps of Engineers.

Mr. Bewley explained that one of the problems is that the Corps of Engineers has difficulty communicating with the contractor. A group of the project participants met to address communication issues and revised procedures were put into place to improve communication pitfalls. Part of the difficulty is that there are three or four Corps of Engineers work groups, with different responsibilities in this project and no single entity is in charge. The communication partnership meetings were very good

and many of the issues got resolved at the first meeting.

The contractor is very late with the pipeline portion of the project, which had a milestone completion date of August 22, 2008. They have not resumed work on the pipeline portion yet. The work is about 95% completed with only some key components remaining. All the valves and tees, and the connection across the Kinder Morgan line tying it to the existing pipeline, remain to be done. Apparently, the contractor is involved in a significant dispute with the pipeline subcontractor regarding payment. A Stop Payment Notice in excess of half a million dollars was issued to DERWA and the Corps of Engineers. Both DERWA staff and the Corps of Engineers have found the contractor has never submitted an adequate construction schedule as required by the contract documents. The Corps of Engineers has written five or six letters to the contractor stating that they need to submit a schedule. This schedule requirement is critical because this project clearly cannot be completed on time. There will be arguments about delays, who caused them, and liquidated damages.

The contractor did ultimately submit an excavation shoring design that met Chevron's requirements to protect the fiber optics line. Chevron hired a consulting firm to come out to keep an eye on the project work. As for the schedule, it will get done, but not in April or May as was originally scheduled. It is more likely to be July. This will delay the EBMUD site retrofits by at least a couple of months and result in the use of potable water for irrigation where recycled water was planned to be used.

- EBMUD Distribution System Phase 2 Funding and Design – Status Update  
Mr. Bewley reported that this is another Corps of Engineers project. DERWA has \$15 million in federal funds authorized through the Water Resources Development Act (WRDA). About \$8 million of that has been appropriated and about \$5.5 million is committed to the current projects. The remaining WRDA funds will be used for the EBMUD distribution system projects. Last year, DERWA developed a design plan and schedule with the Corps of Engineers. EBMUD will create their own design that will then go through the Corps of Engineers review process over the next four to six months. The objective is to get a contract awarded for those unobligated funds before the end of federal fiscal year, October 1, 2009. Through the federal stimulus package, the Corps of Engineers probably has the remaining \$7 million of WRDA funds coming to them and they will be looking for projects that they can move quickly. The WRDA funds are going toward EBMUD projects so it is 100% EBMUD capital as far as the local share. EBMUD has plans to utilize that full \$7 million remaining in the near term.
- Commercial Paper Debt Interest Rates and Next Reissue Dates –  
Authority Manager Bewley reported that DERWA had a couple of commercial paper notes due for reissue in November and December of 2008. He sent out the good news by email that the reissue interest rates were very favorable. The rates are lower than ever and are less than half of what they have been for the last couple of years. Authority Manager Bewley will work with Treasurer Lou to establish strategies for the end of the year when the letter of credit expires. It will be important to have some alternatives in place well ahead of the end of the year.
- Confirm Next Meeting Date – April 27, 2009



The next meeting will be held April 27 and adoption of the FY 2010 budget will be on that agenda.

### 13. BOARDMEMBER ITEMS

Chair Mellon welcomed V.C. Hansen back to the Board as a regular Director rather than an Alternate. The Chair noted V.C. Hansen was on the original Board of DERWA in 1995 along with Director John Coleman.

V.C. Hansen agreed he was and said it was great to be back. However, he believes this is a great program and a great agency. He expressed his pleasure in serving this year.

Chair Mellon also noted that Director Scannell had an exemplary career as Chair in 2008.

Director Scannell thanked everyone who assisted him during his tenure as DERWA Chair in 2008. He said it was very easy working with the staff and had a special thank you for Nancy Hatfield.

Mr. Bewley said there was a plaque for Director Scannell recognizing his year as Chair and another plaque for leaving Alternate Director Katy Foulkes. He thought they would be more meaningful if they were given at an EBMUD Board Meeting for Director Foulkes and at the DSRSD Board Meeting for Director Scannell.

Chair Mellon reported that he went to Yosemite in January and passed Don Pedro Reservoir. He felt that the sight was upsetting with the reservoirs so low. He wanted to say how proud and supportive he is of this DERWA project.

### 14. ADJOURNMENT

Chair Mellon adjourned the meeting at 6:55 p.m.

Submitted by,



Nancy Gamble Hatfield  
Authority Secretary