

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

**Board of Directors Special Meeting Minutes
Monday, November 30, 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 6:32 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 Jeff Hansen, and Director Dan 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 6:58 p.m., from teleconference location 165 Rudgear Drive, Walnut Creek, California

4. SPECIAL ANNOUNCEMENTS/ACTIVITIES

Authority Manager Bewley requested that the Agenda items would need to be taken in order until Item 8.B, which should be heard following the Closed Sessions. Representatives from the U.S. Army Corps of Engineers (USACE) will be invited to join in the first closed session.

5. PUBLIC COMMENT – 6:35 p.m. – None received.

6. APPROVE MINUTES – Special Meeting of October 5, 2009

Motion by Director Scannell, Second by V.C. Hansen to approve the minutes from the Special Meeting of *October 5, 2009*

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

AYES: Scannell, Hansen, Mellon

NOES:

7. CONSENT CALENDAR

A. Treasurer's Report – Treasurer's Report for September 30, 2009 and October 31, 2009

B. Amendment No. 1 to Operations Agreement between Dublin San Ramon Services District and DSRSD • EBMUD Recycled Water Authority and East Bay Municipal Utility District - Approved – Resolution No. 09-8

Mr. Bewley commented that Item 7.B proposes a simple modification to the Operations Agreement. He noted that the date the DSRSD Report of Operations is to be submitted is being changed to be consistent with other annual reports. Mr. Bewley mentioned that EBMUD staff suggested this amendment may not be necessary and a letter agreement could possibly suffice. He recommended the Board still move forward to approve Item 7.B and if it is determined that an amendment is not required, he will report this to the Board.

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

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

AYES: Scannell, Hansen, Mellon

NOES:

8. BOARD BUSINESS

A. DERWA Debt Financing Program Status Update

Treasurer Richard Lou reported that this agenda item is a follow-up to the debt financing the Board has been discussing for the last several months. At the October 5, 2009 DERWA Special Board meeting, staff received direction to secure an extension to the Letter of Credit with J.P. Morgan Chase Bank. The Letter of Credit that supports DERWA's Commercial Paper is due to expire on January 22, 2010. Financial advisors Montague Derose and Associates have recently finalized negotiations with J.P. Morgan for a four month extension on the Letter of Credit beginning January 22, 2010. The terms will be very favorable at a rate of 120 basis points, or 1.2% per year, which is prorated for the four month time period. Also at the October 5, 2009 meeting the Board directed staff to seek a longer term financing arrangement for the fixed rate debt.

Subsequent to the DERWA Board Meeting, the EBMUD Finance/Administration Committee met on October 27, 2009, and reviewed financing alternatives. They concluded EBMUD should not participate in long term DERWA financing but rather DERWA should either issue fixed rate debt on behalf of DSRSD, or have DSRSD obtain its own financing for its share of the \$50 million outstanding debt.

Mr. Lou reported that EBMUD did agree to continue their participation in the Commercial Paper Program extension for four additional months while it would take DERWA, working with DSRSD, to arrange a fixed rate financing deal.

Mr. Lou acknowledged DSRSD's Financial Services Manager Lori Rose and Ms. Jenny Poree, from Montague Derose and Associates, who were present in the audience to answer questions and discuss the financial matters.

Chair Mellon requested clarification on whether the four month extension of the Letter of Credit begins in January 2010. Treasurer Lou answered that the extension will need to be executed prior to January 22, 2010 and will extend the term of the Letter of Credit to May 21, 2010.

Ms. Poree from Montague Derose and Associates addressed the Board and explained that she was present to answer questions and to give a brief synopsis of what has occurred over the past month related to financing. Ms. Poree reported that J.P. Morgan Chase Bank approved the extension of the existing Letter of Credit, completed the level one credit approval, and approved the extension effective January 22, 2010. However, nothing will be finalized until a formal credit approval is completed.

Chair Mellon commented that he supports the extension of the Letter of Credit through May 2010 and asked Ms. Poree's opinion on the possibility of a longer extension.

Ms. Poree said that J.P. Morgan was willing to grant a six month or longer extension of the current security structure when this was discussed initially. She noted that an extension should be granted unless something dramatically changed from a credit perspective.

Chair Mellon asked why the Letter of Credit was not extended for six months or more. Ms. Poree responded that the direction she was given was to seek a three or four month extension.

Mr. Lou responded that EBMUD was not comfortable with more than a three or four month extension and felt that that was a reasonable amount of time for DERWA to arrange its own fixed rate issue.

V.C. Hansen said that, as he recalled, the DERWA Board recommended an extension of the Letter of Credit of up to one year.

Mr. Bewley agreed that the recommendation was to extend the Letter of Credit up to one year. He explained that from EBMUD's perspective, though, the Letter of Credit extension will cost them additional money. The four month extension was decided upon based on the assumption that DSRSD would not be able to get the fixed rate debt financing in place by the January 2010 expiration date. EBMUD agreed through their Finance Directors' Office, and working with their General Manager, that they would participate in the Letter of Credit at the current cost share for up to four months. Mr. Bewley commented that he believes there is still an opportunity for discussion of an additional extension if the fixed rate loan alternative cannot be completed in the four months.

V.C. Hansen clarified that the document distributed tonight dated November 30, 2009, and titled "Irrevocable Direct Pay Letter of Credit supporting \$50,000,000 DSRSD/EBMUD Recycled Water Authority (DERWA) Commercial Paper Notes, Series A" was in fact the Letter of Intent.

Ms. Poree responded affirmatively and stated that after progressing through the credit approval process and receiving pricing, it is as firm a document as possible without having the signed documentation.

V.C. Hansen asked if the Board would next receive a presentation of the schedule.

Ms. Poree answered that this was correct. She noted that the handout dated November 30, 2009, titled "DERWA Financing Schedule" is what a fixed rate financing schedule would look like for DSRSD.

Ms. Poree stated that the schedule, given out, assumes that there are two financing routes that could be taken: either a DSRSD through DERWA, or a DSRSD, alone financing. She then described the details of the financing process. She noted that specific disclosures are required for the different possible financing scenarios.

Director Scannell asked Ms. Poree to refer to Page 3 of the J.P. Morgan letter of intent to renew and asked if she would clarify the ratings graph at the top of the page.

Ms. Poree responded that each of the rating agencies has different criteria for rating the bank and not all three rating agencies have given J.P. Morgan the same rating outlook,

which is an overall evaluation of the health of the bank. Some of the rating agencies have been increasingly harsh with the banks, explained Ms. Poree.

Chair Mellon asked if there were further questions or comments

Director Scannell reported that he attended the EBMUD Finance Committee meeting on October 27, 2009 and understood the big picture from EBMUD's perspective and why the Committee took their staff's recommendations which were based on the low interest rates and opportunity offered for them. However, DERWA is a JPA comprised of the two Member Agencies. He believes that discussions among EBMUD staff were not foreseen by DSRSD. Since this is a partnership, he believes it would have been good to have forewarning or knowledge of those recommendations coming to the EBMUD Finance/Administration Committee. He would have appreciated receiving the staff reports or some type of information and communication before the meeting.

Chair Mellon commented that he is not a member of the Finance Committee. However, Director Coleman is on that Committee. Chair Mellon apologized to his fellow DERWA Boardmembers stating the Finance/Administration Committee direction is not the path he would have wanted related to the financing issue. He also hoped the extension on the Letter of Credit would have been longer.

Chair Mellon stated his commitment to revisit this matter with the EBMUD Board as soon as possible. He said that he had a certain view of what the DERWA partnership is and this situation sounds somewhat less than that. He commented that he realized everyone was being diplomatic, and that Ms. Poree was being incredibly patient and understanding in this difficult position. Chair Mellon commented that he appreciated Ms. Poree's work and requested that she investigate lengthening the term of the Letter of Credit to at least six months.

Chair Mellon called for a short recess at 6:53 p.m.

Chair Mellon called the meeting back in session at 6:55 p.m.

Treasurer Lou suggested that Ms. Lori Rose, Financial Services Manager/Treasurer, from DSRSD address the Board on the financing matter.

Ms. Rose addressed the Board and explained that DSRSD had been asked to put their efforts into looking at a separate financing to retire the Letter of Credit and Commercial Paper. Ms. Rose stated that it would be vastly advantageous if the current Letter of Credit could be extended up to a year. The fees and interest are significantly better than DSRSD anticipates securing on their own, which at best may be 5%, or as much as 7% per year. She noted that a one year extension would certainly go a long way in assisting DSRSD to weather the current economic storm affecting the agencies. Ms. Rose stated that since DSRSD is a much smaller agency, the \$25 million share is equal in effect to the amount of the bonds that EBMUD is issuing. DSRSD has a policy whereby it tries to pay for all of its expansion debt through connection fees which is not the same as EBMUD that has it tied to their rate base. She explained that this will have a very significant impact on DSRSD at a time when it is exceptionally difficult to take on an extra debt load. Ms. Rose concluded by saying that she would appreciate greatly the option of extending the current Letter of Credit.

At 6:58 p.m. Director John Coleman began participating in the meeting from teleconference location 165 Rudgear Drive, Walnut Creek, California.

Chair Mellon apologized for interrupting Ms. Rose earlier in her address to the Board and told her he would ask her to continue with her remarks a little bit later.

He apprised Director Coleman that he did not have the current information on the financing schedule, or the document on the extension of the Letter of Credit from J.P. Morgan, which had been distributed. Chair Mellon explained that the rates were much more favorable than had been expected and asked Treasurer Lou to give a recap of the highlights.

Treasurer Lou stated that Montague Derosé and Associates had advised the Board that J.P. Morgan was willing to extend the current Letter of Credit for four months beginning January 22, 2010, at 120 basis points, or a 1.2% annual rate. During that four month timeframe, EBMUD is proposing that the DERWA financial team begin to work on a fixed rate option being backed by DSRSD only.

Mr. Lou explained that this direction differs from that which was given to staff by the DERWA Board on October 5, 2009.

When the EBMUD Finance Committee met on October 27, 2009, the EBMUD staff recommended to the Committee that EBMUD not participate in long term financing with DSRSD through DERWA because it is financially better for EBMUD to issue this debt on their own and that DSRSD had other reasonable alternatives. The current Letter of Credit may be extended for an additional four or five months.

Chair Mellon asked Ms. Poree if the Letter of Credit could be extended up to one year if desired by the Member Agencies.

Ms. Poree answered that this could be accomplished.

Chair Mellon asked what this extension would mean financially to each of the Member Agencies.

Treasurer Lou responded that it would mean approximately \$26,000 per month, per Member Agency for the extension of the Letter of Credit and Commercial Paper, plus some additional expenses which might bring the total to around \$30,000 per month.

Chair Mellon asked how that would compare to the cost of the Member Agencies financing separately.

Treasurer Lou answered that if both Member Agencies were to continue with the Commercial Paper, but not with DERWA, it would be an additional \$30,000 per month for EBMUD since they don't need the Letter of Credit to back their Commercial Paper as DSRSD does.

Chair Mellon asked Director Coleman about the discussion at the EBMUD Finance Committee meeting related to the possibility of securing a one year extension to the Letter of Credit.

Director Coleman said his recollection was that it would result in substantial additional cost to EBMUD. He asked Treasurer Lou what he recalled about the discussion.

Treasurer Lou responded that the one year proposal in the EBMUD memo was at a cost of \$300,000 to \$500,000 for one year and a several million dollar figure was if EBMUD continued the program over a longer period. The comparison was of EBMUD getting out of the Commercial Paper program versus staying in the program and with the term of the repayment.

V.C. Hansen asked if the Program being referred to was the current Commercial Paper Program, or an assumed joint, fixed rate program with a several million dollar impact to EBMUD.

Director Coleman stated that he believed it was the current Commercial Paper Program.

Treasurer Lou said that the DERWA Commercial Paper Program does require a Letter of Credit, and if EBMUD issues Commercial Paper themselves it does not require a letter of credit; however, staying in the DERWA program would cost EBMUD an additional \$350,000 per year if the rates stay the same as they are now.

V.C. Hansen asked if the EBMUD staff analysis made a comparison of the additional costs to EBMUD, which he felt was the compelling factor for the decision at the Committee, that assumed a fixed rate joint program with the kind of rating anticipated, compared to the Commercial Paper Program. V.C. Hansen pointed out that DERWA has known for months that they would not be continuing with the Commercial Paper Program and that the Letter of Credit would need to be extended in order to secure the fixed rate financing in the future.

Treasurer Lou explained that when EBMUD looked at the proposal for DERWA there were two main issues. First, the DERWA proposal that staff presented at the EBMUD Finance Committee meeting was for a one year extension of the Letter of Credit for the Commercial Paper Program, which was the direction given by the DERWA Board. When EBMUD looked at that proposal, they realized it would cost \$300,000 more for them than if they issued the Commercial Paper on their own because they do not require a Letter of Credit.

Second, EBMUD considered the long term joint financing with DERWA and with EBMUD backing up the credit for DSRSD and vice versa. However, when EBMUD considered this, the type of guarantee being discussed was not acceptable to EBMUD and possibly the financial institutions. Mr. Lou reported that EBMUD staff did not believe that was a viable arrangement.

V.C. Hansen did not believe that the "step up" provision matter could not be dealt with in some way. V.C. Hansen expressed concern that the information the EBMUD Board was given was based on the Commercial Paper Program running long term, which was never the intention, and is why the DERWA Board gave staff direction to look into a joint fixed rate financing. He commented that DERWA would never continue in a program that would result in a several million dollar loss to both DSRSD and EBMUD. V.C. Hansen asked Mr. Lou if an analysis was done and provided to the EBMUD Board on the cost or savings of a long term fixed rate financing over the current Commercial Paper program now in place.

Treasurer Lou stated that his recollection from the EBMUD Finance Committee meeting was that the discussion was on the fixed rate financing and not focused on the extra costs.

V.C. Hansen responded that this is what he believed.

Chair Mellon asked Director Coleman if he believed it would make sense to take this financing topic again to the EBMUD Finance Committee at a special meeting next week. Chair Mellon stated that given this favorable rate for the Letter of Credit, possibly the EBMUD Board could reexamine the matter and give revised direction to obtain to seek a one year extension to the Letter of Credit.

Director Coleman responded that he agreed this made sense if the dollar difference is not as great as initially reported at the Finance Committee meeting. The next EBMUD Board meeting is scheduled for Tuesday December 8, 2009.

Director Coleman was unsure if a special meeting of the Finance Committee could be called by December 8, 2009. Their next regular meeting is in January 2010.

Director Coleman asked Treasurer Lou when this new finance information came to light.

V.C. Hansen asked if Director Coleman was referring to the J.P. Morgan proposal dated November 30, 2009, titled "Irrevocable Direct Pay Letter of Credit supporting \$50,000,000 DSRSD/EBMUD Recycled Water Authority (DERWA) Commercial Paper Notes, Series A."

Director Coleman responded that he was, in fact, referring to the proposal that had been distributed at the meeting tonight.

Treasurer Lou stated that he was not sure that this was new information, although he agreed the EBMUD Board could certainly consider the issue.

Chair Mellon stated that he did consider it new information and of such value to solicit a motion.

Director Coleman expressed concern about time constraints and that the impact could put DSRSD in jeopardy with their financing options.

Chair Mellon explained that he was seeking a way to give Ms. Poree direction to continue to move forward, while asking the EBMUD Board to review this issue again and report back on the possible one year Letter of Credit extension.

Director Coleman recommended Chair Mellon contact EBMUD General Manager Dennis Diemer the next day in order to have this item added to their December 8, 2009 Board Agenda.

Chair Mellon said he would do that.

Motion by Chair Mellon, Second by V.C. Hansen to direct Ms. Poree to continue to move forward with the four month extension of the Letter of Credit; to request the EBMUD Finance/Administration Committee and Board consider the November 30, 2009,

communication from J.P. Morgan regarding the terms of the Irrevocable Direct Pay Letter of Credit; and, to request that the EBMUD Board consider and provide authorization to increase the term of the Letter of Credit up to one year.

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

AYES: Mellon, Hansen, Coleman, Scannell

NOES:

Mr. Bewley and Directors discussed the future investigation of a fixed rate financing, depending on what occurs at the EBMUD Board.

Chair Mellon commented that depending on what happens at the EBMUD December 8, 2009 Board meeting, this will become clear.

Mr. Bewley stated that even with a one year extension of the Letter of Credit the plan is to move to fixed rate financing overall.

Motion by Director Scannell, Second by Chair Mellon to direct staff and financial consultants to take the necessary steps to issue fixed rate DERWA debt supported by DSRSD only with a target issuance date which is consistent with the extension of the Letter of Credit.

Director Scannell noted that the motion will allow the change to occur if it is a four month or a one year extension to the Letter of Credit.

Chair Mellon asked if there were comments.

V.C. Hansen commented that sometimes if something is said enough times it becomes the gospel, e.g., the gospel of the DSRSD only fixed rate financing. He referred back to the talk of partnerships spoken about at the previous DERWA Board meeting. If DSRSD has to pursue fixed rate financing alone, then, of course it will, because it has to. He expressed his concern at what kind of rating DSRSD would be able to carry on a fixed rate debt without EBMUD. V.C. Hansen stated that what he heard from Treasurer Lou on this issue is not that the financing is too expensive, but more about the "step up" provision that DSRSD does not support because that provision does not seem to make sense for a water utility. EBMUD and DSRSD talked about going forward on this financing together as a partnership and taking out the Commercial Paper with fixed rate financing. He pointed out that DSRSD has always made it very clear that it needed EBMUD for securing favorable ratings for DERWA. V.C. Hansen said he would support the motion made, if that is the way this item is moving, because he must protect his District. He commented that he did not know how all of this happened so suddenly, and that he believed it was staff driven at EBMUD. He also did not understand how, when the DERWA Board gave unanimous direction, it was derailed and completely different results are occurring.

Chair Mellon asked if V.C. Hansen would like to propose a substitute motion.

V.C. Hansen said he did not but he needed to proceed as recommended in an attempt to protect DSRSD.

Director Coleman noted that Chair Mellon is not part of the Finance Committee and what was presented at that meeting were situations that could end up costing EBMUD rate payers several million dollars in rate increases due to a lack of water this year.

V.C. Hansen stated that he appreciated Director Coleman's comments, but that Director Coleman had not been part of the meeting earlier when it was established with Treasurer Lou that the statement relating to the several million dollars, which V.C. Hansen agreed had been compelling, had not been related to fixed rate financing at all. Instead, it is related to continuing with the Commercial Paper Program. The DERWA Board has known for many months that it had no intention of continuing with that program.

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

AYES: Scannell, Mellon, Coleman, Hansen

NOES:

Chair Mellon noted that in a few minutes the Board would be going into Closed Session where Items 10.A, 10.B and 10.C would be covered. He apologized to the representatives of the USACE for the long wait, noting the importance of the items that had been discussed, and he thanked them for attending the meeting to participate in part of the Closed Session. Chair Mellon also apologized to Ms. Lori Rose for having to stop her in the middle of her comments and asked if she would like to add anything.

Ms. Rose reiterated that it would be greatly beneficial to DSRSD if they could get a one year extension of the Letter of Credit and continue to work through the issue of what the meaning of the partnership is. She also expressed her appreciation to the DERWA Board that this matter is being reviewed.

9. MANAGER'S REPORT

- Contracts Initiated Since the Board Meeting of October 5, 2009 – None
- Confirm Meeting Dates – Special Meeting December 14, 2009 and a Regular Meeting December 28, 2009

Mr. Bewley proposed that the Board reserve December 14, 2009 for a Special Board Meeting to follow up on the financing process. He noted that the Regular Board meeting may not be needed on December 28, 2009.

Chair Mellon suggested the Board hold December 14, and December 28, 2009 as meeting placeholders. He also suggested reserving January 25, 2010 for a Special Board meeting.

The Board went into Closed Session at 7:30 p.m. The USACE representatives were invited to join the Board at 7:45 p.m. for Closed Session Item 10.A.

10. CLOSED SESSION

- A. Pursuant to Government Code Section 54956.9 (b) - Significant Exposure to Litigation (one case)

- B. Pursuant to Government Code Section 54957 – Public Employee Performance Evaluation
Title: Authority Manager
- C. Pursuant to Government Code 54957.6 – Conference with Labor Negotiator
Agency Designated Representative: General Counsel
Unrepresented Employee: James B. Bewley, Authority Manager

11. REPORTS FROM CLOSED SESSION

The Board returned from Closed Session at 8:24 p.m.

Chair Mellon stated there were no items to report from the Closed Session.

General Counsel Maddow noted for the record that Director Coleman was no longer participating in the meeting, although he did participate throughout the Closed Session and discontinued his participation at 8:22 p.m.

8.B. Authorization to Execute Amendment No. 2 to the Agreement for Services for Authority Manager

Motion by Director Scannell, Second by Chair Mellon to approve Resolution No. 09-9 to Approve and Authorize Execution of Amendment No. 2 to Agreement for Services as Authority Manager of the DSRSD•EBMUD Recycled Water Authority.

The motion carried (3-0) by the following vote:

AYES: Scannell, Mellon, Hansen

NOES:

Chair Mellon asked Mr. Bewley if he was ready to execute documents as presented. He added that the Board had appreciated having Mr. Bewley as Authority Manager.

Mr. Bewley said the documents were ready as presented and thanked the Board. He added that he could not believe that he had been working for four years already as Authority Manager. Chair Mellon agreed that it was just a blink in time.

12. BOARDMEMBER ITEMS

Chair Mellon spoke briefly on a conference he attended in November on employee benefits where there was a discussion on the termination of union provided retirement programs.

Chair Mellon reiterated that a Special Board meeting is scheduled for December 14, 2009 at 6:30 p.m. along with the Regular Board meeting on December 28, 2009.

13. ADJOURNMENT

Chair Mellon adjourned the meeting at 8:31 p.m.

Submitted by,

Nancy Gamble Hatfield
Authority Secretary