

**DSRSD • EBMUD RECYCLED WATER AUTHORITY
(DERWA)
Board of Directors Regular Meeting Minutes
Monday, August 24, 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. SPECIAL ANNOUNCEMENTS/ACTIVITIES

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

6. APPROVE MINUTES – None.

7. CONSENT CALENDAR

A. Treasurer's Reports - June 30, 2009 and July 31, 2009

B. Quarterly Investment Report – June 30, 2009

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, Coleman, Mellon

NOES:

8. BOARD BUSINESS

A. Workshop Presentation on Long Term Debt Financing Alternatives

Treasurer Lou reported that during the past year staff and the Board have discussed the current \$50 million Commercial Paper Program. At the July 13, 2009 special meeting general concepts of a couple of options were discussed. Directors requested staff have financial advisors give a presentation on the options for continuing with a Commercial Paper Program or a fixed rate revenue bond. Mr. Lou introduced Jenny Poree and Natalie Perkins from Montague DeRose and Associates, DERWA's financial advisors.

Ms. Poree addressed the Board and gave a presentation on long term debt financing alternatives for DERWA. She discussed the many changes in the market since DERWA last sought financing. Her firm has surveyed liquidity providers for highly rated banks and found their costs have increased fivefold. For example, most banks are now willing to provide liquidity to highly rated issuers for over 100 bases points, and upwards of 150 to

200 bases points, and financing time commitment is also shorter. She noted that the Member Agencies will have to consider budgetary impacts with any changes in financing arrangements. DERWA's Letter of Credit for the existing Commercial Paper Program will expire in January 2010. Ms. Poree stated that the credit risk with a fixed rate loan can be better managed than other financing mechanisms. Relying on bank liquidity by utilizing a Letter of Credit puts DERWA in a position where the bank's credit drives the cost of borrowing, whereas if DERWA chooses a fixed rate solution, DERWA's credit drives the cost of borrowing.

Director Coleman asked if implementation of DERWA's projects will be slowed due to the proposed financing changes.

Authority Manager Bewley responded that the alternatives include refinancing of existing debt, which if successfully completed, would have no impact on project schedules. Richard Lou responded DERWA could renew its existing Letter of Credit, solicit bids from other credit enhancement providers, or take out the commercial paper with fixed rate revenue bonds. The goal would be to have one financing structure in place by the end of the calendar year so as to not slow DERWA's capital projects.

Ms. Poree discussed financial structure options, comparing and contrasting a fixed rate debt structure and a Commercial Paper Program. She highlighted the advantages and disadvantages of each structure noting that a fixed rate debt has a higher level of certainty than maintaining a Commercial Paper Program.

Director Scannell asked about the possibilities of diversifying the debt. Ms. Poree acknowledged that this is quite possible. DERWA could have some of their debt in a Commercial Paper Program and some with a fixed interest rate. However, with smaller fixed rate transactions, it can be more difficult to get interested investors.

Director Coleman asked questions about the Federal Government continuing to assess the "health" of financial institutions. Ms. Poree noted that she could do some research on this matter and inform the Board. She acknowledged Director Coleman's concerns.

Ms. Poree showed and discussed graphs of historical interest rates from August 1999 through August 2009, a fixed rate interest option, a variable interest rate option, and their possible impacts. She discussed the overall interest rates for both the fixed and variable rate financing options. Over a period of up to 5 years the annual debt service for principal and interest ranges between \$3.2 to \$3.6 million for a fixed interest rate financing option, and between \$2.9 and \$3.2 million for a variable rate. However, less certainty with the interest rate exists in a variable rate financing structure.

Ms. Poree discussed the credit considerations and a "step-up" provision. DERWA's credit will be evaluated by the rating agencies and/or liquidity providers. A significant element of the credit analysis will be focused on the credit fundamentals of both Member Agencies. DSRSD has strong credit but not as strong as EBMUD. Often JPA's have step up provisions. This may be a credit consideration and would require a step up provision added to the existing Recycled Water Sales Agreement. This means one Agency would step up to make debt payments if the other party defaults. Without a step-up provision, the credit rating will reflect a higher risk profile associated with the assumed credit profile of the lower rated Member.

Director Coleman asked some questions about the mechanics of a step up provision, including debt payments, ownership of facilities, etc., and commented that there needed to be very strong ramifications to defaulting by an Agency. Mr. Bewley commented that default procedures would have to be developed and different scenarios could be envisioned.

Ms. Poree emphasized the importance of making a step up provision as clear as possible so that if Boards needed to raise rates in order to prevent default it would occur.

Treasurer Lou noted the next agenda item includes a recommendation to hire a bond counsel who is familiar with step up provisions and default considerations.

Director Coleman commented that this is an extremely important matter for him.

Mr. Bewley stated that with either financing alternative, a step up provision will likely result in lower financing costs. In a September special meeting, staff will return with materials necessary to make an amendment to the Recycled Water Sales Agreement and incorporate the step up provisions.

Chair Mellon pointed out the importance of all three Boards (DSRSD, EBMUD, and DERWA) having the opportunities to meet and discuss this matter.

General Counsel Maddow acknowledged that when the DERWA Board considers the schedule, the process for three different Boards will be included.

Mr. Bewley noted that in order to stay on the proposed schedule, decisions will have to be made in September.

Director Scannell requested an overview on how the new payments will be met and the effect on the respective Member Agencies' operating budgets.

V.C. Hansen asked about the value offered by the step up provision.

Ms. Poree answered that this is probably the difference between an A or AA rating and approximately 50 to 70 bases points over a 25 to 30 year period. On a variable rate debt it could be somewhere between 150 to 250 bases points.

General Counsel Maddow noted that bond counsel is experienced both with sales agreements and step up provisions. He asked if Ms. Poree is also familiar with step up provisions.

Ms. Poree stated that as a financial advisor she has worked with step up provisions in several agreements and could be of assistance in structuring that provision along with bond counsel. She also has worked as a rating analyst on the credit side.

Ms. Poree continued her presentation and discussed the fixed rate and the commercial paper renewal schedules with the fixed rate closing in November and the commercial paper in October.

In conclusion, Ms. Poree outlined the next steps in the process for restructuring long term

debt. She stated that next the Board will want to select the preferred financing structure, consider and decide upon a step up provision, select a finance team, begin the document and rating process, and procure a rating in anticipation of a successful financing. Ms. Poree then invited questions from the Board.

Director Scannell thanked Ms. Poree for the excellent presentation. He believes DERWA needs to move toward a fixed rate on a majority of the debt, and a lesser amount in commercial paper with a variable interest rate, so the debt can be leveraged, if possible. He suggested that if the Board selects a fixed rate, that it choose a 5-year principal delay to provide ample time to get the housing market moving again.

Motion by Director Coleman, Second by V.C. Hansen to direct staff to continue to pursue fixed rate refinancing with a step up process integrated into this financing deferring principal payments five years, and to outline procedures in event of a default.

Director Scannell commented that he supports the motion and supports a step up provision. He believes there needs to be incentive so that the other Member Agency does not default. Without knowing the specifics, it is hard to understand everything clearly.

Director Coleman clarified that the motion was a direction rather than negotiation to staff and then the Member Agencies' Boards would have to have their approvals.

V.C. Hansen commented that the DERWA Board has for some time believed that converting debt into a fixed rate structure makes sense. However, both DSRSD and EBMUD Boards need to fully understand the step up provisions and how they could affect the Member Agencies. He noted this will make for interesting discussions at the staff level for the next few weeks. DSRSD will want to know how the step up provision reads.

Mr. Bewley stated that he understands the Board's Motion as direction to staff to pursue the next step in refinancing the long term debt into fixed debt and begin the step up provision discussions. No decisions will be made until the item comes back to the Board for action which both Boards will have to consider.

Chair Mellon stated that he believes DERWA does not really have much choice in not refinancing this debt due to the potential for hyperinflation. He supports the hybrid idea of the majority of debt at a fixed rate and the other as commercial paper for liquidity.

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

AYES: Coleman, Hansen, Scannell, Mellon

NOES:

General Counsel Maddow suggested the Board tentatively schedule a meeting in advance of when they need to make decisions on this financing.

Chair Mellon requested the Board to set tentative special meeting dates for September 21 and 28, and October 12. The next regular meeting is scheduled for October 26, 2009.

B. Approval of Bond Counsel Agreement and Direction to Execute Said Agreement

Authority Manager Bewley reported the item before the Board is an agreement with

Fulbright & Jaworski L.L.P. for bond counsel services. The agreement was reviewed by General Counsel Maddow's office and prepared in consultation with the bond counsel. To continue with DERWA's \$50 million refinancing plan, bond counsel services will be retained to facilitate this process and provide necessary legal services. Fulbright and Jaworski L.L.P. and Curls Bartling P.C. will be appointed as co-bond counsel to DERWA in connection with the extension or replacement of the Letter of Credit supporting the outstanding commercial paper notes or the issuance of the refunding bonds.

Motion by Director Scannell, Second by V.C. Hansen to approve Resolution No. 09-5 appointing Certain Professionals, authorizing the Preparation of Documents in Connection with Proposed Financing, and authorizing, approving and ratifying certain actions related thereto.

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

AYES: Scannell, Hansen, Coleman, Mellon

NOES:

C. Adoption of Addendum for Changes to the EBMUD Distribution System Phase 2 3 4 Project to the San Ramon Valley Recycled Water Project EIR

Motion by Director Coleman, Second by V.C. Hansen to approve Resolution No. 09-6 to adopt Addendum to the San Ramon Valley Recycled Water Program Environmental Impact Report.

Authority Manager Bewley acknowledged Ms. Valerie Young who was in the audience and noted that 13 years ago she worked for CH2M Hill and was responsible for preparation of the DERWA program EIR.

Ms. Young addressed the Board and commented that she would be pleased to answer any questions related to the San Ramon Valley Recycled Water Program Environmental Impact Report Addendum dated August 2009.

Not hearing any questions from the Board, Chair Mellon asked for the vote.

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

AYES: Coleman, Hansen, Scannell, Mellon

NOES:

D. Authorize Increase of Local Share Contribution for EBMUD Distribution System Phase 2 3 4 Project

Authority Manager Bewley reported that this item is to request approval for an increase in the local share cash contribution for the EBMUD Distribution System Phase 2 3 4 Project from \$98,625 to \$2,097,875. Staff's recommendation is to fund all of the remaining local share cost at this time.

Mr. Bewley explained that at previous meetings the Board had approved the initial local share financing for the EBMUD distribution projects, under the Water Resources Development Act (WRDA) \$15 million funding. The Pump Station R200A/Pipeline Reach IH segment project work is nearing completion. During the initial phase of this project the appropriations were slow in coming and in small amounts. Since spring

2009, all of the remaining funds have been appropriated. The funding requirements will necessitate that the EBMUD Distribution Phase 2 3 4 project construction contract be awarded in December 2009. EBMUD is proceeding with the design and is on schedule. Having EBMUD staff perform the design work allows for more money to be spent on construction. The upcoming work could potentially extend the DERWA system to Blackhawk in Danville. When this project is completed USACE will transfer the infrastructure to DERWA, and DERWA will then transfer the facilities to EBMUD.

Motion by Director Coleman, Second by V.C. Hansen to approve Resolution No. 09-7 authorizing Increase of Local Share Contribution for EBMUD Distribution System Phase 2 3 4 Project.

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

AYES: Coleman, Hansen, Scannell, Mellon

NOES:

E. Approve Task Orders No. 5 and No. 6 for Fiscal Year 2009-10 Public Information Services with Jones & Stokes Associates

Authority Manager Bewley reported that this item is for two task orders with Jones & Stokes Associates. DERWA has used Jones & Stokes for the public information services for several years through initial construction and start-up. Mr. Bewley described Task Orders No. 5 and 6 for which the work will be completed in FY 2009-2010. Task Order No. 5 – Public Information/Community Outreach Activities will be for continuing support to the Member Agencies' staff to develop informational materials related to the operations phase of work. The work of Task Order No. 6, Future Phases Construction Outreach Activities, will primarily support the outreach for capital projects, specifically the EBMUD distribution project. For instance, the City of San Ramon has extensive public notice and public information requirements for work being performed in their City.

Director Coleman asked if Jones & Stokes had four task orders last fiscal year. Mr. Bewley responded that there were four task orders for approximately \$50,000. Director Coleman also asked how many hits were on the DERWA website.

Ms. Karen Molinari from Jones & Stokes answered that she could obtain that information for Director Coleman and noted there were many hits on the website, which was critical to address the construction issues and concerns with the delayed work on Bollinger Canyon Road.

Director Coleman was curious as to how much work was actually necessary by Jones & Stokes.

Mr. Bewley explained that using Jones & Stokes creates a coordinated approach to public information with a consistent message going out to customers. This is more efficient than having the two Member Agencies do this work independently.

Motion by V.C. Hansen, Second by Director Scannell to approve Task Orders No. 5 and No. 6 under the August 18, 2008 Professional Services Agreement with Jones & Stokes Associates.

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

AYES: Hansen, Scannell, Coleman, Mellon

NOES:

12. MANAGER'S REPORT

- Contracts Initiated Since the Board Meeting of July 13, 2009 –
 - Whitley Burchett & Associates – An agreement was entered into for CEQA Assistance on the EBMUD Distribution System Phase 2 3 4 in an amount not to exceed \$6,222 with Valarie Young as CEQA sub-consultant.
 - Universal Field Services, Inc. – An agreement was entered into for the EBMUD Distribution System Phase 2 3 4 Contractor Storage Area Site Selection in an amount not to exceed \$11,968. A construction staging area is needed and there are two candidate sites.
 - Montague & Derosé – An agreement for not to exceed \$40,000 was entered into for financial advisory services.
 - The Covello Group Construction – An agreement was entered into for not to exceed \$20,000 for advisory services for Fiscal Year 2009-2010. They will perform services as needed for standard specifications and updates and current construction documents. DSRSD, Delta Diablo, and Union Sanitary District all utilize The Covello Group's expertise in this area.
- Pump Station R200A/Pipeline IH Project Update – The contractor reports the work will be completed by the end of September; however, Mr. Bewley commented completion would not be possible in that time frame.
- EBMUD Distribution System Phase 2 3 4 Update – The design work is approximately 65% complete. The Army Corps of Engineers will review the 95% design work submittal on September 28. The bid will then go out for advertisement. The construction contract is expected to be about \$8 million.
- Confirm Next Meeting Dates – Chair Mellon asked the Board to hold the following tentative dates for a special meeting if the need should arise in the next several weeks: September 21, September 28, and October 12. The next regular meeting is scheduled for October 26, 2009.

13. BOARDMEMBER ITEMS

Director Coleman thanked Ms. Poree for her great presentation.

14. ADJOURNMENT

Chair Mellon adjourned the meeting at 7:08 p.m.

Submitted by,

Nancy Gamble Hatfield
Authority Secretary