

# WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS MEETING MINUTES – MAY 9, 2019

**Meeting Date | Time 5/9/2019 6:30 PM | Meeting Location San Pablo City Council Chambers, 13831 San Pablo Avenue, San Pablo, CA**

Meeting called by Board of Directors

Type of meeting Regular

Authority Staff Present Stan Hakes, Christina Leard, Andy Schneider, Melinda Wong

Legal Counsel John Bakker

## Board Members Present:

Directors: G. Lyman (Chair), El Cerrito; D. Romero, Hercules; P. Murray, Pinole; A. Pineda, San Pablo; N. Bates, D. Johnson (Alt.) and J. Myrick, Richmond

Absent: F. Glover (Ex-Officio) Contra Costa County

## CALL TO ORDER/ROLL CALL

Chair Lyman called the meeting to order at 6:34 P.M. The Roll Call established the existence of a quorum (Bates, Johnson (Alternate), Lyman, Murray, Myrick, Pineda, and Romero). \*Director Bates arrived at 7:12 P.M.

## URGENCY ITEM

Chair Lyman advised of an urgency item that required immediate action due to a May 31, 2019 deadline, which had come to the attention of the Authority after the agenda had been published and which required a two thirds vote of the membership to be able to proceed.

**MOTION** by Director Murray to make the necessary findings of urgency to add Discussion of AB 1826 Compliance by Member Agencies and the Authority and Recent Correspondence from CalRecycle, which required action by May 31, 2019 prior to the next scheduled meeting on June 13, 2019, and which had come to the Authority's attention on May 6, 2019 after the agenda had been posted, to be added to the agenda as Item 8.5. **SECOND** by Director Myrick.

**MOTION PASSED** unanimously.

**MOTION** by Director Romero to consider Urgency Item 8.5 out of agenda order prior to moving to Closed Session. **SECOND** by Director Myrick.

**MOTION PASSED** unanimously.

## **Urgency Item 8.5 – Discussion of AB1826 Compliance by Member Agencies and the Authority and Recent Correspondence from CalRecycle | Presenter Stan Hakes – Executive Director**

Executive Director Stan Hakes provided a presentation, with copies available to the Board and to the public, for an update from CalRecycle and to request direction to staff. He explained that a compliance status update had been provided at the April Board meeting to identify improved communications and compliance with CalRecycle, to identify the actions taken by RecycleMore to monitor compliance with both AB 341 and AB 1826, and to identify the subsequent meetings with CalRecycle. A follow-up email had been sent to summarize next steps, which had indicated that CalRecycle had been pleased with the progress made by RecycleMore, the member jurisdictions, and Republic Services as well as the commitment to continue moving forward to work together to clarify roles, responsibilities, and timelines.

While nothing had been indicated regarding formal plans from the individual member agencies, Mr. Hakes stated he had been advised by CalRecycle later that had been the intention, although not specifically mentioned in the

meeting with CalRecycle or the follow up. He described what had been done in the interim to meet CalRecycle's expectations and reported that Republic Services had volunteered to take the lead on compliance functions, to be further discussed, particularly given the upcoming vacancies created by RecycleMore personnel retiring or ending RecycleMore employment. On May 3, CalRecycle had called to advise that they planned to send emails to each member agency regarding an expectation of the individually approved plans related to mandatory commercial recycling and mandatory organics recycling by May 31, 2019, which was the first indication of that requirement. On May 6, in Mr. Hakes' absence, Mr. Schneider had been asked by CalRecycle to approve the contents of the communication, which he did. RecycleMore also sent a clarifying email to the member jurisdictions in advance of the CalRecycle email. This email emphasized that RecycleMore was committed to completing the plans with Republic, with an opportunity for review by the member agencies prior to the May 31, 2019 deadline.

Director Romero referred to the CalRecycle email and their request for RecycleMore to focus on the 2019 mandatory organics recycling threshold for four or more cubic yards per week of all generation, to improve the accuracy of monitoring data, and to continue increasing the compliance rates with aggressive follow-up with letters, phone calls, and site visits to covered generators not recycling, which he stated Mr. Hakes had not mentioned and which the Board needed to know. As such, he asked how that plan would be developed, with follow-up.

Mr. Hakes stated that RecycleMore is currently working with the 2019 threshold of four cubic yards per week of disposal only. After CalRecycle clarified their intention was that the threshold be four cubic yards of solid waste generation, RecycleMore has requested the data to begin working with those generators as well.

Director Romero requested that the Board be provided information at the same time it was received by staff given that the Board was the decision maker and given that the budget was being discussed and there was no idea of how much the work would cost.

Director Murray wanted to know the process, the cost, and RecycleMore's role as the party responsible, and Mr. Hakes reminded the Board that RecycleMore had a five-member staff, one employee had left and two more would be leaving by August 1, 2019, as would the Civic Spark Intern, leaving a limited staff during a period of transition. He added that it would be fairly easy for Republic, as a private company on a short term contract with a company such as Cascadia, to conduct intensive follow-up in the short term for AB 341 and AB 1826. He stated that Republic was the service provider, had done similar compliance work in other areas, had its own records, and there were some confidentiality issues involved. He did not know the cost at this time but suggested the Recycling Fund Reserves could potentially be used to fund the cost and consider the rates next year for any ongoing costs.

JoAnn Jaschke, CalRecycle, Local Assistance and Market Development (LAMD) Branch, was present to offer information and would offer more detailed information at a later date, if desired. She advised that CalRecycle had identified a program gap with how RecycleMore was going about implementing mandatory organics recycling, and over the last year progress had been made to address that program gap. She noted that a few things were still needed to address that gap and CalRecycle was asking for plans from each member agency as to how they were going to move forward. She added that the plans could all be the same, but the member agencies needed to be engaged in what they would do keeping in mind the 2019 mandatory organics recycling threshold of for four or more cubic yards per week, the accuracy of monitoring data, and increased compliance rates with aggressive follow-up with letters, phone calls, and site visits to cover generators not recycling. She clarified that AB 1826 put the responsibility on the individual jurisdictions.

Chair Lyman verified that the enforcement would be to each individual member agency and verified with Ms. Jaschke that the plans were boilerplate, everyone collectively was moving forward to accomplish all the required goals, and the three items referenced by Ms. Jaschke would continue to be addressed by RecycleMore.

Ms. Jaschke emphasized that everyone would have to work together to move forward, particularly given the stringent regulations required by SB 1383.

By consensus, Directors sought a proposal from Republic Services to outsource the implementation of the plans and have a budget prepared for consideration at the June meeting before moving forward.

## CLOSED SESSION

The Board adjourned into Closed Session at 7:20 P.M.

- 1. Public Employee Appointment**

Title: Interim Executive Director

- 2. Conference with Labor Negotiators**

Agency designated representative: Greg Lyman, Board Chair

Unrepresented employee: Interim Executive Director

- 3. Report Out of Closed Session**

The Board returned to open session at 7:57 P.M., and reported that continued direction had been given to the Labor Negotiators.

## PLEDGE OF ALLEGIANCE/EX-PARTE COMMUNICATIONS & DISCLOSURE/PUBLIC COMMENT

Chair Lyman led the Pledge of Allegiance.

Chair Lyman called for ex-parte communications. There were none. Chair Lyman called for public comment. There was none.

## CONSENT CALENDAR

Chair Lyman called for approval of the Consent Calendar consisting of three items.

**MOTION** by Director Murray to approve Consent Calendar Items 6.0, 6.1, and 6.2. **SECOND** by Director Johnson.

**MOTION PASSED** with Director Romero's abstention.

## STAFF REPORT

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### Staff Report Item 7.0

Mr. Hakes reported that:

- 1) The FY 2017-18 Financial Audit had yet to be completed given delays with the CLA auditors who had scheduled field work for June 17 and 18, with help from Maze & Associates. One of his priorities prior to his retirement was to see the completion of the audit. He hoped it would be completed by the July meeting.
- 2) Leonard McNeil, a former San Pablo City Councilmember and RecycleMore Board member had passed away.
- 3) A Civic Spark Fellow had been approved to replace the current Civic Spark Fellow Adam Murphy, who had decided to move on after August. A contract would be presented to the Board for consideration in the near future. Mr. Murphy was commended for his work with RecycleMore.
- 4) A list of project updates was provided and highlighted along with a brief description of the requirements under SB 1383.
- 5) Nicole Forte with Republic Services had reported on the HHW event on April 19 in Hercules where 559 people had participated at the Hercules Corporation Yard, the biggest involvement ever with 58 percent Hercules

residents, 18 percent from Pinole, 10 percent from Rodeo, 5.5 percent from Crockett, 4 percent from Richmond, 3 percent from El Sobrante, 1.5 percent from San Pablo, and two people from El Cerrito; disposing of 20,400 pounds of paint care program materials, 18,775 estimated basic hazardous waste, and 15,000 pounds of e-waste.

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**Agenda Item 8.0 – Joint Exercise of Powers Agreement (JEPA) Update | Presenter Stan Hakes – Executive Director**

Mr. Hakes highlighted the long effort to update the JEPA as detailed in the May 9, 2019 staff report, reported that the Board had been engaged in the process since early 2016, and the city managers group had continued to be involved in JEPA recommendations to the Board. He described what had occurred since the last meeting of the city managers in January 2019 related to the weighted voting or retention of the three Richmond Directors on the Board and the position each member agency had taken in that regard. There had been a Board consensus in March to ask the city managers to meet again, with staff to recommend that Richmond retain its three Directors, that core services remain as defined by the city managers' framework, and that any new non-core programs or projects require a unanimous vote of the Board, with language for withdrawal and disbursement of reserves to be negotiated into language that all could support.

The city managers and the Executive Director had met on April 23 with a consensus to arrive on a common agreement on all issues with the exception of the governance issue. He recommended that the Board discuss the voting representation issue and provide clarification if there was a majority of the Board in favor of including a provision that Richmond would retain its current voting representation. He stated if that was the Board consensus, the consensus of the city managers was that the proposed JEPA should be prepared by staff and Legal Counsel in collaboration with the city managers, be considered by the Board, and if approved by the Board be submitted to each individual member agency for consideration.

Mr. Hakes recommended that staff and Legal Counsel prepare an updated draft legal document entitled May-June 2019 JEPA Update, include the current voting structure with three Directors from Richmond, include language to incorporate the seven other issues that had been resolved by the city managers group, to be distributed to the city managers group and city attorneys for review and comment, and to be finalized by Legal Counsel prior to consideration by the Board at its July 18, 2019 meeting.

Mr. Hakes referred to the draft JEPA Section 15 which noted that financial obligations would remain even if an agency voted against it, which would be something that would only apply with an opt-in. He would work with Legal Counsel to include language for exceptions to that rule.

Director Romero asked that information be communicated to the city managers. He also clarified that the proposal was for three votes from Richmond as opposed to one weighted vote, which he did not support. He requested that the current JEPA agreement be sent to each member agency for distribution to each city manager.

Chair Lyman clarified the adoption of the new JEPA followed the existing JEPA's rules, and both the existing rules for adopting a future JEPA should be distributed along with the proposed JEPA language.

Mr. Bakker recommended that the city attorneys be advised to expect a draft of the new JEPA along with the old JEPA. He would note the special rules as to how the document could be amended and point out Section 15 of the agreement.

Director Murray referred to the long negotiations and the city managers' consensus for conclusion of the structure of the JEPA moving forward prior to the retirement of two city managers when the consensus of the city managers group had changed, and when Richmond had declared that all negotiations were invalid. As such, it was his understanding that the process would have to start all over again.

Mr. Hakes advised that in the March and April discussions, there had been direction by the Board to move forward with the three votes for Richmond and the rest of the amended JEPA, as negotiated by the city managers, and staff was moving ahead unless the RecycleMore Board offered different direction at this time.

Chair Lyman described the situation with the then Richmond City Manager who had been frustrated by the weighted vote discussion and who had suggested one vote for Richmond in exchange for weighted votes for specific sections of the agreement. He asked for a clarification of what had since been recommended.

Mr. Hakes advised that one of the issues was the Post-Collection Rate methodology, which would have required a unanimous vote; core services on a temporary or permanent basis would require a unanimous vote; and if there was another JEPA amendment after this one would have required a unanimous vote, along with a number of other issues related to bond financing and special projects where a unanimous vote would be required of the Board and of the member agency councils. Whether the budget should have a unanimous vote had also been discussed but had since been established as a simple majority. He added that as part of the discussion the reserve levels were set and the resolution to change that reserve target level would also require a unanimous vote of the Board, which was also part of the JEPA negotiations.

When the JEPA was approved, Director Romero suggested that any substantial changes, such as the voting changes, be identified on the cover sheet. While he had initially suggested that one vote by everyone would have simplified the process, since that time the safeguards requiring unanimous votes would help and allow Richmond its three votes with one vote each. He did not support a weighted vote. While not perfect, he was ready to support the document.

Director Pineda stated that San Pablo did not support a weighted vote.

Director Myrick stated that anything that did not include three votes from Richmond or a weighted vote would lead to Richmond's withdrawal from the JPA. He clarified with Mr. Hakes that the city managers were waiting for the RecycleMore Board to make a decision. He asked the other members what it would take to support the JEPA, as submitted.

On the discussion of what it would take for the cities that opposed a three-member delegation from Richmond, Director Bates recalled the reason for the three votes from Richmond which had to do with population. He stated the JEPA had been established so that the West County region could work together as a team. He too advised that eliminating the three votes for Richmond would result in Richmond's withdrawal from RecycleMore.

Director Johnson noted that another reason for Richmond's three votes was that Richmond also housed the majority of the facilities.

Mr. Bakker clarified that to approve the JEPA there would have to be a majority of the cities that represented a majority of the Board seats, or as Mr. Hakes noted a majority of the city councils representing a majority of the city seats.

Given the need for regional cooperation, and while there were differences of opinion and objections, when polled the members of the Board expressed a desire to remain a regional body under a revised JEPA.

Chair Lyman referred to Attachment 1, the City Managers' Summary and requested an addition to Section 15 to the second sentence in Item 6. El Cerrito Compensation and HHW Budget on Page 4 of 4: *Any member agency with a*

*separate Post-Collection Agreement would pay their share of HHW program costs through an allocation based on aggregated solid waste tonnage processed through the Post-Collection Agreement.*

**MOTION** by Director Myrick to:

- Direct staff to prepare a May-June 2019 JEP A Update, a clean redline against the most recent August 23, 2018 version to incorporate changes;
- Include the current Board voting structure;
- Include the seven JEP A issues resolved by the city managers group on August 23, 2018, which would include the unanimous votes for the issues previously identified;
- Incorporate changes to the withdrawal language agreed to by the city managers;
- Incorporate Section 15 notes on financial obligations;
- Include the change to the language with the elimination of the conflicting language identified by Contra Costa County; and
- San Pablo to be identified as the administrative city. **SECOND** by Director Romero.

**MOTION PASSED** by the following Roll Call vote:

**AYES: Bates, Johnson, Lyman, Myrick, Romero**

**NOES: Murray, Pineda**

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**Agenda Item 8.1 – Fiscal Year 2019/2020 RecycleMore Operating Budget Workshop | Presenter Stan Hakes- Executive Director**

Mr. Hakes reported with respect to the Fiscal Year 2019/2020 Operating Budget that the preliminary estimated expenses were \$1,234,477, about \$35,000 more than last year, and the preliminary revenues were \$1,034,500. The Operating Fund also included \$58,500 in funds for a fully reimbursable Used Motor Oil Recycling Program. The proposed Recycling Fund Budget included \$125,000 for core service one-time projects. Most of the funding would come from Recycling Fund reserves and a small portion from interest.

The Operating Fund Reserves had been estimated at \$602,330 as of June 30, 2019, at an estimated \$85,710 or further below the established target. Recycling Fund reserves at the end of 2019-20 had been estimated at \$1,627,877.

Mr. Hakes described seven policy items that the Board would discuss that would reduce the level of reserves, and a list of core service annual and one-time projects that he recommended be deferred for discussion with the new Interim Executive Director.

Mr. Hakes identified the primary changes to the budget as an increase of \$132,500 in Professional Service Contracts, a \$15,500 increase in Capital Outlay Expenses, and a decrease of \$119,222 in budgeted Operating Fund Personnel Expenses, and described the reasons for those changes. Five positions had been projected; an Executive Director, Manager of Office Administration, two Program Managers, and a Recycling Coordinator/Administrative Assistant. It was expected that the Executive Director would be an Interim for six months and the other positions could be contracted out, if desired. There would also be one limited term Civic Spark Grant Fellow.

Mr. Hakes responded to questions and noted that in the FY 2019/20 Recycling Fund, a study to be brought back to the Board in June or July would identify a strategy for investing the funds. He suggested the actual investment for a side fund would require the use of a consultant given the plus or minus \$500,000 funds involved from Recycling Fund Reserves, with some from interest. The Operating Reserves level of \$1,639,998 had been reduced by the disbursement of reserves to Contra Costa County and a payment to reduce RecycleMore's CalPERS liability, and had now been estimated at \$602,330; \$85,719 below the target level of operating reserves set by the Board in 2018. As a result, there would be a need to replenish the reserve from the Recycling Fund reserves to balance a difference of \$199,977 between FY 2019-20 preliminary projected revenues versus FY 2019-20 preliminary projected expenses.

Mr. Hakes responded to comments from Director Romero about Recycling Fund expenses and reported that the Records Management Study and Implementation from last year's budget estimate of \$30,000 had yet to be initiated, and while this year's estimate had been shown at \$35,000, it could be reduced to \$30,000. He also explained in response to Director Romero that SB 1383 Plan Technical Assistance at \$50,000 would be required to ensure that RecycleMore had the necessary assistance to meet the onerous requirements of SB 1383.

Director Romero sought more detail on the necessity for that assistance and asked of the projects set up last year how many had been completed and how many had not. He also requested that the COLA be memorialized in writing.

On the policy items, Mr. Hakes referred to the shortfall of \$199,977 and asked whether the Board wanted to use reserves, modify the rates, or use a combination of both. He recommended Alternative 1, the use of the Recycling Reserves.

While some members of the Board suggested considering each policy issue separately, Director Romero recommended that since the cost of the outsourcing to do the compliance for CalRecycle was unknown, that discussion should be deferred until that information was available.

Director Myrick agreed and wanted to know the actual expenses in 2018-19 and whether or not the budget had actually exceeded projections, which would affect the 2019-20 budget.

Chair Lyman suggested that the presentation next month should continue to show a gap and the Board would make the decision on the alternatives next month when the actual gap had been identified.

Mr. Hakes explained that the budget would need to be adopted by July 1, 2019, and potentially multiple resolutions could be available for adoption at the next meeting and he could speak with Legal Counsel about a potential continuing resolution.

Director Murray stated not considered was the new direction for Republic Services to accommodate AB 1826.

Director Romero suggested this year's budget should reflect the core services that had been proposed and agreed to by all the cities, suggested the proposed budget was not reflective of the agreed upon core services, and questioned why that had not been done.

Mr. Hakes noted a fundamental misunderstanding of core services, explained that the core services to be provided were the same core services that had been provided in the past and what would be provided in the future, and did not support a staff level reduction to retain the same services. Given the work load, he explained there had been a number of items that could not be addressed in the core services level, such as records management. He recommended the retention of the staffing level to address the core services. In response to Director Romero's concern that there was nothing definitive as to what core services were, he explained that a long list of core services had been defined in the JEPAs and by the city managers, and the existing core services needed the existing staffing. He added that the city managers framework did not speak about a reduction of staffing other than potentially contracting out administrative services, which had been included as part of the budget. He affirmed, when asked by Director Murray, that the implementation of SB 1383 would require additional staff.

Chair Lyman identified the goal to have a budget priced against the core services available at the next meeting for Board discussion and action in a format to make adjustments directly to the budget. Mr. Hakes was directed to provide a different breakdown of the budget to compare it to the core services that the city managers had confirmed in the JEPAs, and on a very brief discussion of the FY 2019-20 Policy Items, there was Board concurrence to do nothing on Policy Items 5, 6, and 7.

**MOTION** by Director Romero to continue the Fiscal Year 2019/2020 Operating Budget to the June meeting and directed staff to provide a different breakdown of the budget to compare it to the core services that had been agreed to by the city managers, and to request budget information from Republic Services for managing AB 1826 compliance. **SECOND** by Director Johnson.

**MOTION PASSED** unanimously.

Note: Director Bates left the meeting at 9:33 P.M. and returned at 10:00 P.M.

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**Agenda Item 8.2 – Republic Services Post-Collection Agreement 2018 Annual Report | Presenter Stan Hakes- Executive Director**

Mr. Hakes noted that there was a written report on this subject, and advised that it could be returned to the Board in June or July.

**MOTION** by Director Murray to receive and file Public Services Post-Collection Agreement 2018 Annual Report. **SECOND** by Director Myrick.

**MOTION PASSED** unanimously.

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**Agenda Item 8.3 – Agreement with Nerd Crossing for Computer and Information Technology Systems Upgrades | Presenter Stan Hakes- Executive Director**

Mr. Hakes advised that the current RecycleMore computer and information technology system was old and out of date, a request for proposals had been sent to five local computer/IT companies, and the only response had been from Nerd Crossing which had offered a proposal for \$23,821 for computer hardware, software, and other information technology systems upgrades. He recommended approval of the Nerd Crossing proposal and requested authorization for the Executive Director to transfer funds in the amount of \$8,000 from other accounts to make up the difference in the Capital Outlay account.

**MOTION** by Director Romero to authorize the Executive Director to enter into an agreement with Nerd Crossing for an amount not to exceed \$23,821 for computer hardware, software, and other information technology systems upgrades, and authorize the Executive Director to transfer funds in the amount of \$8,000 from FY 2018-19 Operating Fund supplies and services account to the Capital Outlay account. **SECOND** by Director Myrick.

**MOTION PASSED** unanimously, with the exception of Director Murray who was absent for the vote.

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**Agenda Item 8.4 – Agreement with Municipal Resource Group LLC for Financial Review Services – Calendar Years 2014-2018 HHW Program Actual Expenses | Presenter Stan Hakes- Executive Director**

Mr. Hakes presented an Agreement with Municipal Resource Group (MRG) LLC for an amount not to exceed \$14,774 for a financial review audit of the years 2014 through 2018 household hazardous waste program actual cost figures as submitted by Republic Services. He reminded the Board that for a number of years there was no HHW balancing account side agreement, which had been adopted by the Board last fall, and with that approval RecycleMore had received a reconciliation with five years' worth of sparse information, a summary for five years' worth of data representing anywhere from \$800,000 to a million dollars of HHW programs times five years. There was a desire to reconcile and verify what had been provided to ensure that the information from Republic Services was accurate.

Chair Lyman suggested the audit was fiscally prudent although he expressed doubt that the savings as a result of the audit would offset the cost of the audit.

**MOTION** by Director Myrick to approve the Agreement with Municipal Resource Group (MRG) LLC for an amount not to exceed \$14,774 for a financial review audit of the years 2014 through 2018 household hazardous waste program actual cost figures as submitted by Republic Services. **SECOND** by Director Johnson.

**MOTION PASSED** with all Directors present, and with Director Romero's nay vote.

## **BOARD MEMBER AND STAFF ANNOUNCEMENTS**

There were no Board member or staff announcements.

## **ADJOURNMENT**

With consensus of the Board, Chair Lyman held a moment of silence and adjourned the meeting at 10:12 P.M. *In Memory of Leonard McNeil* until the next regular Board meeting scheduled for June 13, 2019, to start at 6:30 P.M.

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I hereby certify the foregoing to be a true and correct statement of the Official Minutes of the West Contra Costa Integrated Waste Management Authority Board meeting held May 9, 2019.

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Board Secretary

Date