

WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS MEETING MINUTES – JULY 18, 2019

Meeting Date | Time 7/18/2019 7:00 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
Legal Counsel John Bakker

Board Members Present:
Directors: G. Lyman (Chair), El Cerrito; D. Romero, Hercules; P. Murray, Pinole; A. Pineda (Vice Chair), San Pablo; N. Bates, B. Choi, and J. Myrick, Richmond
Absent: F. Glover (Ex-Officio) Contra Costa County

CALL TO ORDER/ROLL CALL

Vice Chair Pineda called the meeting to order at 7:03 P.M. The Roll Call established the existence of a quorum (Bates, Choi, Lyman*, Murray, Myrick, Pineda, and Romero). *Chair Lyman arrived during Closed Session.

CLOSED SESSION

Legal Counsel John Bakker identified the three closed session items.

The Board adjourned into Closed Session at 7:04 P.M.

- 1. Conference with Labor Negotiators**
Agency designated representative: Board Chair
Unrepresented employees: Program Managers
- 2. Public Employee Performance Evaluation**
Title: Executive Director
- 3. Public Employee Appointment**
Title: Executive Director

The Board returned to open session at 8:00 P.M., and Chair Lyman reported that direction had been given on Item 1 to the Executive Director; the Board had spoken with the future Executive Director regarding Executive Director performance on Item 2; and there was nothing to report with respect to Item 3.

PLEDGE OF ALLEGIANCE

Chair Lyman led the Pledge of Allegiance.

EX-PARTE COMMUNICATIONS & DISCLOSURE

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

PUBLIC COMMENT

CORDELL HINDLER, Richmond, distributed information on a new musical “Once on this Island” in El Cerrito and invited Directors to the Contra Costa Mayors’ Conference in San Pablo on September 5.

CONSENT CALENDAR

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

Vice Chair Pineda pulled Item 6.1 for discussion.

MOTION by Director Myrick to approve Consent Calendar Items 6.0 and 6.2. **SECOND** by Director Romero.

MOTION PASSED unanimously.

Consent Agenda Item 6.1 – Letter Commending Stan Hakes for RecycleMore Service | Presenter Vice Chair Pineda – City of San Pablo

Vice Chair Pineda presented a Certificate of Recognition to Stan Hakes from the City of San Pablo for his four years of outstanding service and offered best wishes for a happy, well-deserved retirement as Executor Director of the West Contra Costa Integrated Waste Management Authority (WCCIWMA), and a thank you for his many years of dedication, loyalty, and commitment to the public sector, not only for Contra Costa County but for the other California agencies in which he had served.

Each Director in turn thanked Mr. Hakes for his service to the WCCIWMA, initially in crises mode, his support of the Board, his emotional forthrightness, and the completion of the JEPA, among other accomplishments, and wished him well in his retirement.

Mr. Hakes thanked the Board for the opportunity to serve the community and for the people he had worked with during his time with the WCCIWMA.

Andy Schneider thanked Mr. Hakes for believing in him and for teaching him what he had during their time together. He also thanked the other staff of the WCCIWMA.

MOTION by Director Romero to approve Consent Calendar Item 6.1 for a letter commending Stan Hakes for RecycleMore Service. **SECOND** by Director Myrick.

MOTION PASSED unanimously.

STAFF REPORT

Staff Report Item 7.0 | Presenter Stan Hakes – Executive Director

Mr. Hakes reported that:

- 1) Indemnification agreements had been received from all agencies to allow the disbursement of surplus reserves, which were in process of distribution.
- 2) The Board had given direction at the June 20, 2019 meeting to bring back the issue of the policy for RecycleMore service and retirement commendations but due to the amount of items on the agenda that had been postponed to another meeting.
- 3) The idea of a Records Management Policy would be discussed with RecycleSmart and the City of San Pablo as well as the new Interim Executive Director to receive input on what needed to be done.
- 4) Municipal Resource Group (MRG) had been hired to do a review of the cost documentation for the Household Hazardous Waste (HHW) programs; the project would be completed in August and an oral report and presentation would be provided in September.

- 5) The 2017/18 Financial Audit field work had been conducted in June, a draft audit was underway, and a major pending item was that the Government Accounting Standards Board (GASB) 74 and 75 standards were relatively new and an actuarial study would be needed for post-employment benefits, and a fully unconditional audit would not be provided without that study. As such, he was working with the auditor and the new Interim Executive Director to hire an actuarial company for a full actuary study for 2018 and an evaluation for the 2018/19 year. The audit would then be completed by the end of August to be on the September agenda.
- 6) Adam Murphy, the Civic Spark Fellow, would complete his work by August 2, and was commended for the work that had been done.
- 7) An HHW Event would be held in El Sobrante on August 10 when mattresses in addition to HHW would be collected, and there would be another HHW in Richmond on September 14 at the Galileo Club where single-use propane cylinders would be collected and exchanged with refillable cylinders.
- 8) Christina Leard was thanked for taking over the HHW Programs and for acting as Board Secretary.

Agenda Item 8.0 – Approve Amended and Restated Joint Exercise of Powers Agreement (JEPA) | Presenter Stan Hakes – Executive Director

The Board determined that there was no need for a lengthy presentation.

Director Murray referred to the recent major JEPA policy issues, Policy Issue 1 and the statement “In the recent past, proposed JEPA language required a unanimous vote of the Board for any Board action to *materially* modify the current rate setting methodology resulting in a reallocation of 5% or more of the cost. On the discussion of that statement, which was shown in the document itself at Section 12.5, the Board agreed to remove the word *materially*.

For Policy Issue 2, Director Murray referred to the recommendation from the San Pablo City Attorney and the recommendation that the Board consider a further condition that a quorum also would require a majority of the Members (three of the five jurisdictions), shown as Section 8.5 in the document itself.

Mr. Bakker stated that language had not been accepted by staff in that it was a policy question for the Board to determine. Specific language had been proposed to indicate that it would require a majority of the total membership of the Board and *a majority of the members* consistent with other language in the JEPA. On the discussion, Directors agreed with the suggestion that the issue would never come up given the consistent representation of the membership, even in an emergency setting. There was no support of the proposed amendment requested by the San Pablo City Attorney.

Director Romero referred to Legal Counsel’s recent JEPA clarification changes, and Mr. Bakker stated the intention of the document was to describe the clarifying changes that had been made in the evolution of the document to clarify certain definitions, define terms that had not been defined, and clarify legislation including the Government Code section to address future OPEB liabilities, the policy of adding items to the agenda, the constitution of a unanimous vote and a majority vote, and HHW programs.

Director Romero objected to the provision proposed for Section 7.5 subject to *reasonable* procedures adopted by the Board of Directors. The Board supported the elimination of the added text.

Director Murray objected to rewording the provision in Section 12.5 requiring unanimous vote for *certain* rate modifications. By consensus, the Board supported the replacement of the word *certain* to *any* since there would have to be a unanimous vote for any rate modifications.

With respect to Vice Chair Pineda’s request to the use of different materials in tonnages at Sections 12.4, 13.1 and 15.1 and the information he had submitted to the Board, Mr. Hakes addressed the question through slides and explained the process for the post-collection rate allocations. He stated that an errata had been submitted to clarify that situation

in the sections referenced, with language that had been included to address that situation in each section to clarify landfill tons, dry waste, and construction demolition. He clarified what had been changed and why the language had been changed in Section 12.4 while leaving the language intact for Sections 13.1 and 15.1.

Chair Lyman advised that the City of El Cerrito had accepted the language.

There were no comments from the public.

MOTION by Director Romero to approve the Amended and Restated Joint Exercise of Powers Agreement (JEPA) subject to amendments as follows:

1. Remove the word *materially* from Section 12.5.
2. Remove the word *reasonable* from Section 7.5.

SECOND by Director Myrick.

MOTION PASSED by a Roll Call vote:

AYES: Bates, Choi, Lyman, Murray, Myrick, Romero

NOES: Pineda

Agenda Item 8.1 – Executive Director Recruitment | Presenter Stan Hakes- Executive Director

Mr. Hakes clarified the action requested that the Board immediately instruct Avery Associates to resume the active recruitment process for a permanent Executive Director.

CORDELL HINDLER, Richmond, provided public comment and supported the staff recommendation.

MOTION by Director Murray to immediately instruct Avery Associates to resume the active recruitment process for a permanent Executive Director. **SECOND** by Director Pineda.

MOTION PASSED unanimously.

Agenda Item 8.2 – Appointment of Steve Duran as Interim Executive Director | Presenter John Bakker, General Counsel

MOTION by Director Romero to make the findings that RecycleMore had commenced and is actively engaged in the recruitment of a permanent Executive Director and that the vacant position requires specialized skills, and authorize the Board Chair to execute the RecycleMore agreement for Employment of an Interim Executive Director between RecycleMore and Steve Duran. **SECOND** by Director Choi.

MOTION PASSED unanimously.

Agenda Item 8.3 – RecycleMore Staffing and Core Services | Presenter Stan Hakes- Executive Director

Mr. Hakes explained that the organization was in transition given that three of the five permanent positions would be vacant by August 1. While a new Interim Executive Director and a Civic Spark Fellow would be hired, other similar JPAs had been researched to compare with RecycleMore's positions of Executive Director, Manager of Office Administration, Program Manager (HHW Programs), Program Manager (PCA Management, State mandates, other duties), and Recycling Coordinator/Administration Assistant positions. RecycleMore's per capita staffing levels are below those JPAs compared. The current staffing positions could maintain the current programs, but there will be additional responsibilities with the upcoming SB 1383 legislation. He described the work that was being done and the administrative work that was not being done given that not all of the five positions were currently filled. There was a contract with Municipal Resource Group LLC (MRG) to help with administrative services. With respect to

the question of how the core services related to the staff duties, he explained that the City Manager's Framework had put together a list of core services that had been listed in the Richmond letter dated July 16, 2018, included in the agenda packet.

Based on that framework and the July 16, 2018 letter, Mr. Hakes advised that six categories of core services had been identified as State mandates (AB 939, AB 341, AB 1826, SB 1383 and others), HHW Services, Post-Collection Agreement Management, Administration, Education and Public Outreach, and Legislation. He explained that currently there would be one day a week when an MRG staffer would be in the office but three to four days a week there would be no general administration staff in the office.

Mr. Hakes reported there was also a need to designate a Board Secretary, someone who could officially attest that an action had been taken by the Board, and he asked the Board how it wanted to address that situation.

STEVE DURAN, the Interim Executive Director, referred to the suggestion for a special meeting in August to discuss staffing issues and agreed with the need for a special meeting, which was later scheduled for August 8, 2019 at 6:00 P.M. Christina Leard would continue to serve as the Board Secretary until that time.

Agenda Item 8.4 – County Financial Obligation for Kensington HHW Services | Presenter Stan Hakes- Executive Director

Mr. Hakes referred to the direction to receive and file the report and provide direction to staff related to the County's financial obligation for Kensington HHW Services. He provided the background to the situation where HHW services are provided by agreement to limited areas of the County outside of RecycleMore's service area, in this case the specific services provided to Kensington, and the County was to pay Republic Services for service to those areas, although the County had made no payment since March 2018. He estimated the unpaid invoices at \$30,000 and noted that the County had indicated it would only pay a portion of that total. He described the County's reasons for the stopped payments primarily related to a lack of the same services offered to residents in RecycleMore's service area; however, he explained that services had been provided and payment had not been made.

Mr. Hakes clarified that the agreement did not have a 30-day termination notice but it had an annual renewal and if one of the parties prior to a date in June wanted to terminate the contract that party would have to give notice 30 days prior to that June date, which would be the opportunity to give notice to end the services. The agreement did include a ten-day notice for cause to terminate the agreement, and unpaid invoices would be just cause. He clarified that this was not just a financial matter in that RecycleMore was responsible for the permits at the HHW facility at 101 Pittsburg Avenue in Richmond, and it was difficult to get permits for an HHW facility.

Mr. Hakes suggested a potential solution would be that RecycleMore's HHW Consultant, Sweetser and Associates, could be asked to conduct a financial study, review the work the County had already done, and consider the issues identified by the County, particularly since there could be a fiscal impact to RecycleMore if the full amount of the invoices was not paid given the HHW Side Agreement.

Director Romero pointed out that the County was paying for the other County areas and he suggested it was outrageous that the County was not paying for Kensington service. He would be willing to pay for a study only after the County had made its payment.

Director Murray clarified that the hauler in Kensington was Bayside, an independent family-owned hauling company, and verified with Peter Nuti of Republic Services that the door-to-door program only applied to the RecycleMore service area.

In response to questions, Mr. Hakes described the inception of the El Cerrito Facility in 2017, its small, confined size, and the areas it served, along with efforts to avoid overwhelming the facility given liability and safety concerns. He stated that Kensington, Tormey and Crockett residents could use the facility at 101 Pittsburg Ave in Richmond but some of the other services, such as the door-to-door program provided to the service area, were not provided to those residents.

DEIDRA DINGMAN, Contra Costa County, explained that she had calculated the amounts consistent with the contract and the unpaid invoice total of \$29,907.52 had been based on budgeted amounts and not on true costs as required by the agreement. She stated the amount of \$10,000 was how much would be due for a period through 2018 according to her calculations, although that did not cover 2019 because she did not have the cost data for that period. She stated that Republic had changed its invoice methodology in 2018 based on budgeted amounts. The County was responsible for the HHW agreement and had tried to address the difference in invoice methodology and Supervisor Gioia was scheduled to meet with Republic Services to discuss the issues. She stated the County was open to paying its fair share when adequately identified.

Chair Lyman emphasized that although the amount was disputed the County should have been paying the undisputed portion of the unpaid invoices. To not pay for eighteen months was unfair to the service provider and unfair to RecycleMore and its ratepayers.

Director Bates urged a resolution of the situation as soon as possible with a payment of the unpaid invoice as soon as possible and suggested the item be discussed again at the special meeting on August 8.

Vice Chair Pineda agreed that the invoices should be paid and while Kensington did not receive the full range of services as the member agencies, he suggested the County fund a third party assessment to consider that situation. He emphasized that all member agencies were being impacted by the County's lack of payment.

Director Myrick disagreed that RecycleMore should share in the cost of a third party assessment and suggested the County should fund that study alone, and Ms. Dingman stated the County could conduct the study itself as long as it had the data.

PETER NUTI, Republic Services, stated the billing prior to the change was the actuals for that quarter and then in the first quarter of the following year there was a true-up because the actuals were not yet available. The actual billing amount for the entire services had not changed. He stated when Republic had agreed to the balancing account it made the budget the actual since any adjustment would be made the following year. Going forward, the budget would be the actual. Republic's position was that all the services encompassed in the HHW program represented the actual cost regardless of who received what service.

Mr. Nuti added that everyone benefitted from the economy of scale since much of what was done was intermingled with respect to packing, shipping, and disposal.

Chair Lyman clarified Republic Services' intent to bill the same amount as before by utilizing the true up account in the side agreement which might involve overpayment in 2018 that would later be balanced.

Mr. Nuti verified that it was corrected for everybody. The methodology was the same used for each community. He clarified that Republic was not the service provider in Kensington. He urged RecycleMore to participate in the meeting brokered by Supervisor Gioia to address the issue.

LARRY SWEETSER, Sweetser Associates, commented that he had just been brought in and he had not had an opportunity to look at the calculations but suggested that a financial study could be done in 10 to 12 hours. He

agreed that the situation related to a policy and contractual issue of what residents who lived beyond the service area were eligible to receive.

Director Romero stated that any meeting between the County and Republic Services would have to include RecycleMore, the three parties to the agreement.

Mr. Nuti explained that the \$29,907.52 due to Republic Services would be credited back to RecycleMore to cover the costs of the HHW program. Republic would only get 15 percent profit margin for its effort.

Chair Lyman requested that staff attend the meeting at Supervisor Gioia's office and Director Romero stated if Republic Services received the payment by August 1, the item would be included on the special agenda of August 8.

Agenda Item 8.5 – Board Discussion of RecycleMore Staffing | Presenter Stan Hakes- Executive Director

Chair Lyman advised that the item had previously been discussed.

BOARD MEMBER AND STAFF ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

With consensus of the Board, Chair Lyman adjourned the meeting at 10:31 P.M. until the special Board meeting scheduled for August 8, 2019 at 6:00 P.M.

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 July 18, 2019.

Christina Leard

Board Secretary, Christina Leard

Jan 13, 2022

Date






2019 07-18 Board Meeting Minutes-WCCIWMA-RecycleMore

Final Audit Report

2022-01-13

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