

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
MINUTES OF THE BOARD OF DIRECTORS MEETING

(July 18, 2013)

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session at the WETA offices at Pier 9, Suite 111, San Francisco, CA.

1. ROLL CALL AND CALL TO ORDER

Chair Charlene Haught Johnson called the meeting to order at 1:00 p.m. Directors present were Vice Chair Anthony Intintoli, Director Gerald Bellows, Director Jeffrey DelBono and Director Timothy Donovan. Vice Chair Intintoli led the pledge of allegiance. Chair Johnson and Vice Chair Intintoli co-chaired the meeting.

2. REPORT OF BOARD CHAIR

Chair Johnson recognized WETA staff for their work during the July BART strike, noting that ferries carried approximately three times their normal ridership.

3. REPORT OF DIRECTORS

Director Bellows reiterated Chair Johnson's comment, adding that his daughter switched to the ferry from BART during the strike and noting that the week delivered proof of WETA's ability to fulfill its mission. He commended staff for their efforts as well as those of Blue & Gold Fleet. Executive Director Nina Rannells added thanks to Blue & Gold Fleet's captains and crews who had worked near maximum capacity to make the week a success stating that there would be a full report on the BART strike at the end of the agenda.

Director Donovan echoed these comments and asked if the agencies involved in the strike response would be using the information gained from the strike in emergency response activities. Ms. Rannells replied that emergency response activities were ongoing and that there had been a drill the week before. She noted that the response to the BART strike was successful in part because of emergency response preparations.

Chair Johnson asked what the status of negotiations was between BART and its unions. Ms. Rannells replied that talks were ongoing.

4. REPORTS OF STAFF

Executive Director Nina Rannells referred the Board to her written monthly report, adding that WETA Federal Representative Peter Friedmann of Lindsay Hart, LLP was arranging an excursion onboard a WETA ferry with Rep. Mike Thompson and others to demonstrate the North Bay Operations and Maintenance Facility project. She also noted that Phase 0 of the North Bay project had received no bids. Ms. Rannells reported that the response to staff outreach from various interested firms had been that the work was too small to bid on, and that a new Request for Proposals was issued with Phase 0 rolled into Phase 1 landside work.

Vice Chair Intintoli asked if this would impact the August funding deadline. Ms. Rannells replied that as the package for Phase 0/1 was already out and that proposals were due at the end of July, a recommendation would still come to the Board for approval at the August meeting and the funding deadline would be met.

Director DelBono asked for clarification of the deadline for award to secure funding. Ms. Rannells replied that the deadline was August 31.

5. CONSIDER PROJECT LABOR AGREEMENT FOR NORTH BAY OPERATIONS AND MAINTENANCE FACILITY PROJECT

Ms. Rannells introduced an urgency item for possible action by the Board regarding the Project Labor Agreement attached to the North Bay Operations and Maintenance Facility project. Ms. Rannells reminded the Board that they had approved a form of PLA for use in Phase 1 and 2 of the North Bay Operations and Maintenance project at the June meeting, and given her the authority to make some limited changes to areas concerning both legal and business matters based upon further information to be provided by the Napa-Solano Building and Construction Trades Council, its members and other concerned parties. She noted that labor representatives had not provided sufficient documentation to warrant the changes to the PLA that they desired. As a result, the PLA issued as a part of the Phase I RFP in June is consistent with the Board-approved PLA, but does not include all of the language that the Council desires. The concern at this juncture is that the Council has now indicated that they will not sign the PLA, so it must be removed from the RFP so that potential bidders are clear on what they are bidding on as proposals are due at the end of the month.

Vice Chair Intintoli stated that he was in favor of utilizing a PLA for the project, but not in favor of one that WETA counsel had advised was not legal. He noted that the Board had already authorized the Executive Director to negotiate business items such as core workers and broadening the authority of the apprenticeship programs but that he found jeopardizing project funding for further changes to the PLA did not make good sense and that it was now time to act definitively.

Public Comment

Jim Sveum, Business Manager for Teamsters Local 315, spoke in support of a PLA with Napa-Solano Building & Construction Trades Council's desired language included.

Public Comment

Brett Risley, Business Manager for Sheet Metal Workers Local 104, on behalf of Napa-Solano Building & Construction Trades Council, said that on June 28 Ben Espinoza had asked him to provide off-site fabrication language for the PLA and that he had copies of a string of five emails between Napa-Solano Building & Construction Trades Council representative Peter Nussbaum and WETA counsel Stanley Taylor of Nossaman and that there had been no progress made. Mr. Risley said he notified Mr. Espinoza that the Sheet Metal Workers would not be able to support a PLA without changes to the off-site fabrication language. He said that the current PLA undermines his collective bargaining agreement and he could not sign onto it.

Public Comment

Frank Crim, Carpenters Local 180, said that the PLA that had been in place with the City of Vallejo was in the best interest of his membership and expressed that it was unfortunate that WETA had not been able to negotiate an agreement that could be used as a template for future WETA projects.

Public Comment

Nicole Goehring, Associated Builders & Contractors, Inc. of Northern California (ABC), said that ABC continued to be in opposition to the use of a PLA for the project, noting that she had not seen the draft language that the labor representatives would like to use. She thanked the Board for discussing the issue publicly rather than in closed session. She presented a letter to the Board from a qualified firm who would not bid the project with the current PLA in place, the Nova Group, and a letter from Pacific Advocacy Group, both dated July 16. She said that members had worked on billions of dollars of projects without PLAs strike free, that PLAs discouraged fair and open competition and that 18 states now ban PLAs.

Public Comment

Sharon Seidenstein, legal counsel representing Napa-Solano Building & Construction Trades Council noted that the PLA at hand was not one that the Council had ever agreed to and that this was a cause

of some confusion. She said the biggest remaining issue was WETA's insistence on carving out work traditionally performed by one of the Council's constituent members. Ms. Seidenstein then added that the key impediment to resolution had been, in her opinion, WETA's reliance on inaccurate and unsubstantiated legal advice provided by an unidentified attorney. She offered to present substitute PLA language to read into the record, to provide the Council's initial PLA language for adoption, or to hold a special meeting to discuss the matters further if there was still time. She also cited two cases allowing PLA's to limit apprenticeship programs to joint labor-management apprenticeship programs and went on to list successful projects done under PLAs which had been completed successfully under budget.

Vice Chair Intintoli asked Ms. Seidenstein if changing the apprenticeship language to restrict it to only joint labor-management programs would resolve the issues with the PLA. Ms. Seidenstein said it was one of five or six points. She said that WETA's negotiating committee's claim that language on the other points is illegal is unsubstantiated and that these are standard provisions in many PLAs her firm has negotiated.

Mr. Taylor clarified that the external counsel advising WETA on these matters was Kent Woodman of Thompson Coburn LLP, who is an expert in procurement and labor with over 40 years of experience.

Director DelBono asked Mr. Taylor for clarification on what key legal issues remained aside from the apprenticeship program. Mr. Taylor said the first issue was off-haul from the project site and whether it is an activity that could be covered under a PLA. Mr. Woodman had advised to the contrary. Mr. Woodman had also advised that the off-site fabrication issue was in violation of the National Labor Relations Act (NLRA).

Mr. Taylor said the Council continued through many rounds of negotiations to return to language that was not acceptable to WETA. He added that while Ms. Seidenstein's firm may always use the same language in their negotiations, there are many examples of PLAs used throughout the state with a variety of language used including language identical to that which WETA was requesting.

Mr. Taylor said that there were also business issues that were not legal issues, including the apprenticeship program, the core worker issue, and identification of benefit programs, and that WETA had been flexible with these.

Director DelBono asked if Mr. Woodman was familiar with State of California labor issues. Mr. Taylor said that he was and that his firm had used him before in similar contexts. Director DelBono then asked if the off-haul or off-site fabrication issues had been challenged in California courts before. Mr. Taylor said he had not seen any indication that they had. However, he explained that Section 8e of the National Labor Relations Act very narrowly proscribed permissible PLA activities and that the Council's recommended language covering off-haul and off-site fabrication issues was overbroad, extending beyond what is permissible to include in a PLA under the Act.

Director Donovan asked if this PLA was intended to cover this project only or WETA projects throughout the Bay Area, and if it was correct that some unions approved of the PLA and some did not. Ms. Seidenstein said that the Council would not sign off on the PLA unless all constituent members were in agreement with the changes.

Vice Chair Intintoli said that he was not willing to jeopardize the project funding to extend this discussion as it relates to Phase 1 work on the project, but suggested that work could continue towards reaching an agreement on a PLA to use on Phase 2 work. Director DelBono said that a PLA was needed that all parties could sign onto and asked if all parties could focus on creating an acceptable PLA for Phase 2 of the project since movement in time for Phase 1 seemed unlikely.

Public Comment

Marina Secchitano of the Inlandboatmen's Union noted that her union and Masters, Mates & Pilots were out on the boats and said that if agreement on a PLA was not reached, it was putting them in harm's way. She said there would be problems if the issue was not resolved. She said that this industry was just as important to her as every other industry. She said she wanted to support the Board and also wanted the Board to support labor.

Vice Chair Intintoli reiterated that a PLA was desired, but that he was not willing to extend this conversation and jeopardize the current project funding. He further pointed out that the South San Francisco terminal project had been completed successfully without a PLA and without any labor issues.

Director DelBono offered a motion to move forward on Phase 1 without a PLA and to direct staff to negotiate a PLA for Phase 2 and to provide updates to the Board on the status of negotiations.

Director Donovan said that he was disappointed to withdraw a PLA the Board had already approved but agreed with Director DelBono. He made a motion to approve the motion, offering additional language that the negotiated PLA for Phase 2 act as the basis for future PLAs on similar WETA construction projects. Vice Chair Intintoli seconded the motion and the item carried unanimously.

6. CONSENT CALENDAR

Vice Chair Intintoli made a motion to approve the consent calendar which included the minutes from the June 27 Board of Directors meeting, recommending amended language to the report on the closed session. Director Donovan seconded the motion and the item carried unanimously.

7. APPROVE A SOLE SOURCE CONTRACT WITH VALLEY POWER SYSTEMS NORTH INC., FOR OVERHAUL OF THE SOLANO'S MAIN ENGINES

Manager of Operations Keith Stahnke presented this item requesting Board approval of a sole source contract with Valley Power Systems North Inc., for the overhaul of the SOLANO's main engines and to authorize the Executive Director to negotiate and execute an agreement for this work in an amount not to exceed \$1,071,000.

Director Donovan asked how long the overhauls lasted. Mr. Stahnke said that these engines could see three to four overhauls before replacement which would occur in approximately the 12th year of service with the Vallejo vessels.

Director Donovan asked if the Vallejo vessels were limited to Vallejo service or if they were ever utilized on other routes. Mr. Stahnke said that the vessel *Vallejo* was used to supplement Oakland service during the recent BART strike but that this was not the norm. Ms. Rannells said that the strike was a good opportunity to look at the flexibility of the vessels. Mr. Stahnke added that the Vallejo boats typically had a higher speed than the central bay ferries.

Director Bellows asked if the air filters were mounted on the engines or external. Mr. Stahnke said they were remote-mounted serviceable filters.

Vice Chair Intintoli made a motion to approve the item. Director Bellows seconded the motion and the item carried unanimously.

8. OVERVIEW OF SAN FRANCISCO BAY FERRY OPERATION DURING THE BART STRIKE

Ms. Rannells, Mr. Stahnke and Manager of Public Information & Marketing Ernest Sanchez delivered an informational overview of WETA operations during the July 1 to July 5 BART strike.

Mr. Stahnke discussed planning, operations coordination, coordination with partner agencies and cities, details on ridership, and the success of Clipper. He noted that the potential for another strike existed

for August 5 and that it would be difficult to sustain the level of service provided during the July strike for a strike of longer duration. Mr. Stahnke also reported that there were no reports of incidents of accidents during the week of the strike.

Mr. Sanchez reported on a successful outreach campaign, including leveraging 511 and Twitter along with traditional media outlets to spread the word, noting the assistance of Jeff Raleigh of MacKenzie Communications, Rob Stankus of Robert Anthony Strategic Marketing & Design, and WETA Administrative Analyst Scott Houston.

Ms. Rannells said that it had been a great opportunity to get the “San Francisco Bay Ferry” name in the public consciousness and that Mr. Sanchez had taken advantage of this moment.

Director Donovan asked if South San Francisco service had seen any bump as a result of the strike. Ms. Rannells reported a significant increase, noting that the service overall had been consistently improving. Mr. Sanchez added that Genentech was now fully funding employee transit on the service and he anticipated growth as a result. He also said the strike had been an opportunity to look at additional connections to Oyster Point such as an SFO shuttle service.

Public Comment

Louis Lamason asked if the ferry would consider taking coins, as he had tried to pay with \$3 in coins and it had not been accepted. He also suggested that WETA consider the issue of Southern California taking all of the water.

9. MARKETING UPDATE

Mr. Sanchez reported to the Board on the first 10 months of FY 2012/13’s marketing campaign for the South San Francisco service. He noted a system wide ridership increase of over 13%. He delivered an overview of the campaign and elements that would be carried through and expanded on for the Fall campaign.

Vice Chair Intintoli asked how the Genentech employee promotion had come about. Mr. Sanchez said it had grown out of many meetings with the Peninsula Traffic Congestion Relief Alliance, South San Francisco Mayor Pedro Gonzales, and the San Mateo County Water Transit Advocates.

10. RECESS INTO CLOSED SESSION AND REPORT ON CLOSED SESSION

Chair Johnson called the meeting into closed session at 3:05 p.m. Upon reopening of the meeting at 4:05 p.m. she reported that no action had been taken.

11. ADJOURNMENT

All business having concluded, the meeting was adjourned at 4:05 p.m.

Respectfully Submitted,

Board Secretary
