

**MINUTES**

**REGULAR MEETING OF THE**

**BOARD OF DIRECTORS**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**DECEMBER 12, 2006**

**46888** The Board of Directors of The Metropolitan Water District of Southern California met in Regular Meeting in the Board Room located in the building at 700 North Alameda Street in the City of Los Angeles, State of California, on Tuesday, December 12, 2006.

Chairman Brick called the Meeting to order at 11:15 a.m.

**46889** The Meeting was opened with an invocation by Michael Milliner, Principal Administrative Analyst in the Corporate Resources Group at the La Verne facility.

**46890** The Pledge of Allegiance to the Flag was given, led by Director Phillip J. Pace.

**46891** Board Secretary Hansen called the roll. Those answering present were: Directors Abdo, Bakall, Barrett, Blake, Bond, Brick, Brown, De Jesus, Dick, J. Edwards, M. Edwards, Fellow, Foley, Griset, Grunfeld, Hall, Hansen, Harris, Morris, J. Murray, W. Murray, Mylne, Pace, Parker, Peterson, Pocklington, Quiñonez, Record, Rez, Sutley, Veres, and Wright.

Those not answering were: Directors Apodaca, Grandsen, Koopman, and Kwan.

Chairman Brick declared a quorum present.

**46892** Chairman Brick invited members of the public to address the Board on matters within the Board's jurisdiction.

Edward H. J. Wilson, councilmember of the city of Signal Hill and former employee of Metropolitan, spoke on the audit issues involving the Kennedy/Jenks engineering contract and his role in reviewing the contract.

Mr. Wilson presented a letter describing these issues to the Board, which is on file in the Board Executive Secretary's office.

**46893** Director Bond introduced Annette Hubbell, General Manager of Rincon del Diablo Municipal Water District, who will be retiring at the end of the year; and Hanno Ix, president of the board of directors of Rincon del Diablo.

**46894** There being no objection, Chairman Brick ordered the reading of the Minutes of the Meetings of November 14 and 28, 2006, dispensed with, copies having been mailed to each Director.

Director Fellow moved, seconded by Director J. Edwards and carried, approving the foregoing Minutes as mailed.

**46895** A written report of meetings attended by Directors at Metropolitan expense during the month of November was distributed.

**46896** The Interim General Counsel's letter signed December 4, 2006, was presented, transmitting the credentials evidencing the appointment by San Diego County Water Authority of James Barrett as one of its representatives on Metropolitan's Board for an indefinite term, replacing Claude A. "Bud" Lewis.

Interim General Counsel Bennion reported the credentials had been examined and found legally sufficient, and that the Oath of Office had been administered to Director Barrett on December 7, 2006.

The Chair ordered the credentials, together with the Interim General Counsel's letter, received and filed.

**46897** Chairman Brick presented to Director Glenn A. Brown a pin for his five years of service on Metropolitan's Board, representing the City of Burbank.

**46898** Director Fellow moved, seconded by Director J. Murray and carried, approving a 30-day leave of absence for Director Carol Kwan, effective December 5, 2006.

**46899** Chairman Brick gave an overview of his vision for Metropolitan and some of the changes he intends to implement in order to strengthen the role of the Board, the Board's leadership, and policy making role. Some of the Board activities for 2007 would include a Board retreat, Chairman's bike ride at Diamond Valley Lake, a water congress, and a sustainability initiative.

Chairman Brick reported on the changes to the Board's committee structure, which will be effective January 1, 2007. He stated the Executive Committee would be smaller in size, have oversight and management of the organization, continue with the same functions as the current committee, and have oversight through subcommittees. The new officers of the Board and Executive Committee are:

Timothy Brick, Chairman  
Anthony Fellow, Vice Chair  
Marcie Edwards, Vice Chair  
Carol Kwan, Vice Chair  
Joseph Parker, Vice Chair

Other changes to the standing committees are:

**Engineering and Capital Programs Committee** – Oversight of engineering and capital programs; and Capital Investment Program

Gene Koopman, Chair  
John Morris, Vice Chair

**Business and Finance Committee** – Continue functions of Budget, Finance, Investment and Insurance Committee and the Asset and Real Property Committee

James Bond, Chair  
Aaron Grunfeld, Vice Chair

**Communications and Legislation Committee** – no changes to the current committee

Isadore Hall, III, Chair  
Larry Dick, Vice Chair

**Legal and Human Resources Committee** – Continue the same functions as the current Legal and Claims Committee; and issues relating to Human Resources

Jesús Quiñonez, Chair  
Steven Veres, Vice Chair

**Water Planning and Stewardship Committee** – Focus on wise management of resources and sustainability; and same functions as the current Water Planning, Quality and Resources Committee except water quality issues.

Nancy Sutley, Chair  
James Barrett, Vice Chair

**Water Quality and Operations Committee** – Operations functions of the current Engineering and Operations Committee; emphasis on water quality; and energy matters.

Glenn Brown, Chair  
David De Jesus, Vice Chair

The schedule of meetings is as follows:

Monday prior to Board:

8:30 a.m.	Business and Finance Committee
10:00 a.m.	Engineering and Capital Programs Committee
12:00 p.m.	Water Quality and Operations Committee
1:30 p.m.	Water Planning and Stewardship Committee

Tuesday:

8:00 a.m.	Legal and Human Resources Committee
9:30 a.m.	Communications and Legislation Committee
12:00 p.m.	Board Meeting

Director Fellow moved, seconded by Director Grunfeld and carried, approving the new committee structure set forth by Chairman Brick.

**46900** Chairman Brick reported on events in which he participated, as follows:

- November 15 - Attended a reception held in his honor by West Basin Municipal Water District at the Stadium Club, Home Depot Center in Carson.
- November 16 - Attended the California Water Policy 16 Conference held at the Wilshire Grand Hotel, Los Angeles, hosted by POWER, where he was the keynote speaker.
- November 16 - Attended the Rancho Santa Ana Botanic Garden grand opening of the California Container Garden (Metropolitan City Makeover Program).
- November 21 - Attended the Urban Water Institute-Executive Committee meeting/luncheon held at Metropolitan.
- November 22 - Attended a breakfast meeting at the Botanical Center with Jim Folsom and Gilbert Ivey.
- November 27 - Participated in the General Counsel interviews.
- December 1 - Attended the groundbreaking ceremony for the Coastkeeper Garden at Santiago Canyon College with Jeffrey Kightlinger and Linda Waade.
- December 1 - Participated in a meeting with Congresswoman Grace Napolitano in Santa Fe Springs.

- December 5 - Attended the State of the State Water Project seminar at the Disneyland Hotel.
- December 5 - Attended a reception held in his honor by the City of Pasadena at the La Casita Del Arroyo Restaurant in Pasadena.
- December 8 - Participated in the Topock tour in Needles, California, accompanied by Jeffrey Kightlinger.
- December 11 - Attended the Directors recognition event at Union Station.

**46901** Board Secretary Hansen reported that the candidates for the position of Board Secretary for the two-year term commencing January 1, 2007, were Directors Judy Abdo, Marcie Edwards, James Edwards, and John Morris.

Directors Marcie Edwards and John Morris withdrew their names from consideration.

There being no other nominations from the floor, the Chair called for a vote. Following the vote and tabulation of the ballots, Board Secretary Hansen recorded the results from the vote. The majority of the weighted votes of the Board was cast in favor of Director Abdo who received a vote of 79.53 percent. Chairman Brick declared that Director Abdo has been duly elected to serve as Board Secretary for the two-year term commencing January 1, 2007.

**46902** Board Secretary Hansen reported that there were two candidates for the two positions on the Inquiry and Review Committee, one for a 2-year term and the other for a 3-year term, both effective January 1, 2007. The candidates were Directors James Edwards and Bill Wright.

Following a discussion and there being no other nominations from the floor, the Chair stated that the individual who gets the most votes will get the 3-year term.

Director J. Edwards stated that if the Board approved, he would acquiesce and take the 2-year term and give Director Wright the 3-year term.

Director M. Edwards withdrew from the Meeting at 11:59 a.m.

Director Grunfeld moved, seconded by Director Foley and carried, that the Board approve by acclamation the recommendation of Director J. Edwards for his election for the 2-year term and Director Wright for the 3-year term on the Inquiry and Review Committee, effective January 1, 2007.

**46903** Chairman Brick introduced Karen L. Tachiki to the Board and reported that she has accepted the job of General Counsel, and Metropolitan was in the process of finalizing the contract terms in line with the parameters of direct reports. The Chairman stated that Ms. Tachiki's salary will be \$204,000 a year with her starting date on February 5, 2007, and that a formal letter will be brought to the Board in January.

Director M. Edwards returned to the Meeting at 12:02 p.m.

**46904** Regarding Colorado River, Bay-Delta, and CALFED matters, General Manager Kightlinger referred to the activity report for November dated November 30, 2006, which was distributed earlier.

On behalf of the staff, General Manager Kightlinger stated that they looked forward to working with the new committee structure and the Board on the issues as outlined by Chairman Brick.

General Manager Kightlinger commented on the Board recognition dinner held last evening and thanked Geraldine Walters, Melanie Gil de Montes, and other staff members who helped make the event a success.

General Manager Kightlinger reported the Skinner plant shutdown went very well. It was completed two days ahead of time, with great cooperation among the member agencies. He stated another shutdown would take place shortly in December at the Weymouth plant.

On the Colorado River issues, General Manager Kightlinger reported on the All American Canal litigation and the recent legislation that was approved last Saturday by the U.S. Congress, which would affect the litigation. He stated that the Coachella Canal lining has been completed. Mr. Kightlinger informed the Board that staff follows and

participates in the Bureau of Reclamation's accounting of consumptive use of Colorado River water. Late this year Reclamation issued its updated preliminary accounting for calendar year 2005 in which it was revealed that Metropolitan's net diversions exceeded the volume available to California from its basic apportionment by nearly 15,000 acre-feet. Reclamation's preliminary accounting also showed that as much as 290,000 acre-feet of Colorado River water apportioned to Arizona in 2005 went unused, so Metropolitan has requested a portion of Arizona's 2005 unused apportionment. With the concurrence of the Arizona Department of Water Resources, Reclamation has approved Metropolitan's request, and the net effect of this approval is to increase Metropolitan's calendar year 2006 Colorado River supplies by nearly 15,000 acre-feet.

General Manager Kightlinger advised the Board that at the ACWA conference there was discussion on the Peripheral Canal, which will be a significant issue of debate in California this coming year. Mr. Kightlinger stated that he wanted to bring the Board's attention to this matter early on for discussion. Surface storage and conveyance are going to be major hallmarks of discussion in the Legislature and in the Governor's Blue Ribbon Committee, which Mr. Kightlinger has been asked to help shape and to work closely with some of the committees in the Assembly.

General Manager Kightlinger commented on the year-end video outreach message to the employees, which is now on Metropolitan's Web site.

**46905** Chairman Brick commended and thanked Sydney Bennion for her outstanding work as Interim General Counsel.

Regarding Legal Department activities, Interim General Counsel Bennion referred to the General Counsel's activity report for November dated November 30, 2006, which was distributed earlier.

Interim General Counsel Bennion welcomed Karen Tachiki as the new General Counsel.

Interim General Counsel Bennion reported that in the *Cargill* litigation, Metropolitan is in the midst of a hearing before an administrative law judge on the issue of whether

Metropolitan should pay a penalty for failure to enroll employees that the District did not know were employees at the time. The hearing was focusing on Metropolitan's level of knowledge and whether at the time Metropolitan knew or reasonably could have been expected to know that agency temporaries and independent contractors were employees for PERS purposes. The Board will be kept apprised on the outcome of the hearings, and a decision is expected in approximately 30 days after conclusion of the hearings.

In the *Watershed Enforcers, a project of California Sportfishing Protection Alliance v. Department of Water Resources* case, Interim General Counsel Bennion reported that there was a motion for preliminary injunction by the plaintiffs, which was heard on November 17, 2006. The court declined to provide a preliminary injunction.

**46906** General Auditor Riss presented a report of the Audit Department's activities for the month of November, dated November 30, 2006. He stated that three Audit Reports were issued during the month. Specifically he noted that the Property Leases Audit Report, The Center for Water Education Audit Report, and Western Municipal Water District of Riverside County Audit Report were issued during the month. Mr. Riss stated that the reports for The Center for Water Education and Western Municipal Water District were issued with generally satisfactory opinions, while the Property Leases report was issued with a less than satisfactory opinion.

General Auditor Riss noted that management is currently engaged in formulating an action plan to deal with the property leases. Mr. Riss gave a brief description of the ongoing review of The Center for Water Education.

**46907** Ethics Officer Elliott referred to the activity report for November dated November 30, 2006, which was distributed earlier.

Ethics Officer Elliott commented on two matters brought to the Ethics Office last month by members of the Board. The first was a question received regarding a potential conflict of loyalties for members of Metropolitan's Board who currently serve on The Center for Water Education board. Dr. Elliott stated that Metropolitan board members who currently serve on

the CWE's board are independently appointed, and not appointed by Metropolitan's Board. Metropolitan has the financial and historical relationship with the CWE and as the two boards have separate fiduciary responsibilities, it is possible that there may be competing fiduciary responsibilities for board members who currently serve, and that is what constitutes a conflict of loyalties. Dr. Elliott informed the Board there is no legal conflict of interest. There is a continuum of ethically permissible responses to the situation, and a memo detailing a variety of approaches has been distributed to the Board. Dr. Elliott noted that concurrence of this opinion has been received from Steven Churchwell, the former General Counsel for the Fair Political Practices Commission.

Ethics Officer Elliott reported on the second matter of a Director expressing concern regarding private deliberations among board members in the nomination of candidates for the General Counsel position. She stated that this process was discussed with Attorney Bill Pellman, who served as external counsel to the Board during the nomination process. Mr. Pellman reported having observed no violation of process in the Board deliberations. In his opinion, private conversations in which board members share information, impressions or questions are not in violation of the Brown Act. Dr. Elliott continued that as the purpose of the Brown Act is public access to deliberative governmental process, and since the matter was statutorily permitted to be discussed and decided in closed session, both Mr. Pellman's and her opinion was that there was no violation of the Brown Act.

**46908** The following Agenda Items were added to the Consent Calendar at the request of: Director Mylne, Items 8-1 and 8-2; Director De Jesus, Items 8-3 through 8-6.

Chairman Brick reported that Agenda Item 7-6, second amendments to the water conservation agreements with Imperial Irrigation District, was withdrawn from the agenda.

Director Hall withdrew from the Meeting at 12:13 p.m.

Director Pace moved, seconded by Director J. Murray and carried, and the Board approved the Consent Calendar Items, **M.I. 46909** through **M.I. 46921**, as follows:

**46909** Adopted the California Environmental Quality Act (CEQA) determination and authorized the General Manager to enter into Farm Lease No. R.L. No. 2480 with HayDay Farms, Inc. for approximately 7,000 gross acres designated as portions of MWD Parcel Nos. PVID-1-110 and PVID-1-130 in Riverside and Imperial Counties, California, as set forth in the letter signed by the General Manager on November 17, 2006.

**46910** Adopted the CEQA determination and (a) approved the proposed amendments to the Conflict of Interest Code in Chapter 2 of Division VII of the Metropolitan Water District Administrative Code for statutory compliance; and (b) authorized the General Counsel to include additional non-substantial changes requested by the Fair Political Practices Commission, as set forth in the letter signed jointly by the Ethics Officer and Interim General Counsel on November 20, 2006, and the General Manager on November 21, 2006.

**46911** Adopted the CEQA determination and authorized changes to the 2006/07 operating equipment budget for the purchase of 11 additional fleet units, as set forth in the letter signed by the General Manager on November 22, 2006.

**46912** Adopted the CEQA determination and **Resolution 9014** supporting Metropolitan's application for Proposition 50, Chapter 4(b) Safe Drinking Water grant funding, as set forth in the letter signed by the General Manager on November 22, 2006, said Resolution entitled:

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AUTHORIZING SUBMITTAL OF AN APPLICATION FOR GRANT FUNDING FROM THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES FOR THE DIEMER, SKINNER, AND WEYMOUTH TREATMENT PLANTS OXIDATION RETROFIT PROGRAMS**

**46913** Adopted the CEQA determination and authorized the General Manager to enter into an agreement consistent with the Summary of Agreement Terms and in a form acceptable to the General Counsel for the Elsinore Basin Conjunctive Use Program, as set forth in the letter signed by the General Manager on November 27, 2006.

**46914** Adopted the CEQA determination and authorized entering into a Five-Year Coordinated Water Operations Agreement with Kern County Water Agency, as set forth in the letter signed by the General Manager on November 27, 2006.

**46915** Adopted the CEQA determination and (a) approved Metropolitan's membership in the California Chamber of Commerce and increased membership dues for Western Electricity Coordinating Council; and (b) authorized the General Manager to pay the annual combined membership fees of \$56,375 for calendar year 2007 (\$10,000 to the Chamber and \$46,375 to WECC), to be paid in fiscal year 2006/07, as set forth in the letter signed by the General Manager on November 27, 2006.

**46916** Adopted the CEQA determination and (a) appropriated \$2.1 million in budgeted funds (Appropriation No. 15419, No. 2, from the Revenue Bonds, Replacement and Refurbishment or General Funds); and authorized (b) Phase 3 of the Dam Seismic Assessment Study; (c) a study of Diamond Valley Lake Owen Dam slope protection; and (d) an agreement with Geomatrix Consultants in an amount not to exceed \$957,000 for geotechnical engineering services, as set forth in the letter signed by the General Manager on November 17, 2006.

Director Morris requested to be recorded as abstaining.

**46917** Adopted the CEQA determinations and (a) appropriated \$2.62 million (Appropriation No. 15371, No. 10, for \$0.964 million; and Appropriation No. 15442 for \$1.656 million, both from the Revenue Bonds, Replacement and Refurbishment or General Funds); and authorized (b) final design and construction of the Jensen Ground Fault Protection Upgrades; (c) preliminary design of the Jensen Surface Wash System Upgrade; (d) final design of the Jensen Administration Building Seismic Upgrades; (e) design and construction of the Jensen Chemical Trench Extension; and (f) final design of the Jensen Entrance Road Improvements, as set forth in the letter signed by the General Manager on November 22, 2006.

**46918** Adopted the CEQA determination and approved amendment of the contract for legal services with Graham, Vaage & Cisneros to increase maximum amount payable by \$100,000, to a revised maximum amount of \$200,000, for *Holy Hill Community Church v.*

*Kim, et al.*, LASC Case No. BC321267, as set forth in the confidential letter signed by the Interim General Counsel on November 30, 2006.

**46919** Adopted the CEQA determination and authorized litigation against XO Communications, and potentially other defendants, to recover damages to the Orange County Feeder, as set forth in the confidential letter signed by the Interim General Counsel on November 30, 2006.

**46920** Adopted the CEQA determination and approved amendment of the contract for legal services with Albright, Yee & Schmit LLP to increase maximum amount payable by \$150,000 to a total of \$500,000 to defend Metropolitan in *Felicia Clayton-Gordon v. Metropolitan*, LASC Case No. BC333064, as set forth in the confidential letter signed by the Interim General Counsel on November 30, 2006.

**46921** Adopted the CEQA determination and authorized the General Counsel to increase the maximum amount payable under the existing agreement with Burke, Williams & Sorensen by \$200,000 for a total of \$600,000 to continue Metropolitan's defense in CalPERS penalty litigation in *Dewayne Cargill, et al. v. Metropolitan*, LASC Case No. BC191881 (consolidated with LASC Case Nos. BC194444 and BS052318), as set forth in the confidential letter signed by the Interim General Counsel on December 6, 2006.

**46922** The following communications were submitted to the Board for information:

- a. Status report for the Inland Feeder Program for activities through October 2006 signed by the General Manager on November 17, 2006.
- b. Review of Water Storage and Transfer Programs, signed by the General Manager on November 27, 2006.

**46923** Director Morris announced that Dick Thomas passed away on November 23, 2006. He was the son of Franklin Thomas, first Chair of Metropolitan's Engineering Committee and Vice Chair of the Board. Director Morris asked that the Meeting be adjourned in Dick Thomas' memory. Director Bond moved, seconded by

Director Grunfeld and carried, that the Meeting be adjourned in Mr. Thomas' memory.

**46924** There being no objection, at 12:19 p.m., Chairman Brick adjourned the Meeting in memory of Dick Thomas.

**HELEN Z. HANSEN**

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**SECRETARY**

**TIMOTHY F. BRICK**

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**CHAIRMAN**