

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**July 12, 2011**

Chair Wunderlich called the meeting to order at 9:00 a.m. in Committee Room 2-145 at Metropolitan's Headquarters.

Members present: Chair Wunderlich, Vice Chair Quiñonez  
Directors Ackerman, Ballin, Camacho, Dick, Edwards, Fleming, Griset,  
Hawkins, Record and Steiner

Member Absent: Director Heidel

Other Board Members present: Directors Blake, Bowersox, Brick, Brown, Evans, Foley,  
Friedman, Grandsen, Lewinger, Little, Morris, J. Murray, Peterson and  
Wright

Staff present: Scully, Bennion, S. Bennett, Elliott, Gagar-Downing, D. Edwards, Green,  
G. Johnson, Kightlinger, Man, Mares, Miyashiro, Muir, Neal, Patterson, Riss,  
Stites, Upadhyay and Waade

**1. OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE  
COMMITTEE ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION**

None

**2. APPROVAL OF THE MINUTES OF THE LEGAL AND CLAIMS COMMITTEE  
MEETING HELD ON JUNE 14, 2011**

Approved

Motion: Fleming                      Seconded: Steiner

**3. CONSENT CALENDAR ITEMS -- ACTION**

None

**4. OTHER BOARD ITEMS -- ACTION**

None

**5. BOARD INFORMATION ITEMS**

None

**6. COMMITTEE ITEMS**

**a. Subject: Interim General Counsel's report of monthly activities**

Presented by: Interim General Counsel Marcia Scully

Interim General Counsel Marcia Scully reported that in the Quantification Settlement Agreement case (QSA), the parties made a motion to supplement the record. The motion will likely be heard the first week in August and once the record is agreed upon, briefing should start within a month.

Ms. Scully also reported that the *Orange County Water District v. Northrop Corporation* and the *South El Monte Operable Unit v. Aerojet* cases have been taken off stay.

**b. Subject: Approve Interim General Counsel's Business Plan for fiscal year 2011/12**

Presented by: Interim General Counsel Marcia Scully

Interim General Counsel Marcia Scully began her Business Plan presentation with water supply reliability. She stated that Bay-Delta issues will consume a majority of the Legal Department's time and financial resources for outside counsel. These items include completion of the Bay Delta Conservation Plan and issuance of a Record of Decision by the end of calendar year 2012; continued litigation on the existing biological opinions and any revised biological opinions that are issued by the federal government; the Sacramento Regional County Sanitation District NPDES Permit, which has been appealed to the State Board; another version of the Delta Stewardship Plan to be issued shortly, which will require extensive review and comment on both the substance of the Plan and the environmental documents; habitat restoration projects relating to the Bay-Delta, including Yolo Ranch and Tule Red, which involve negotiations, documentation, and possibly CEQA review.

With respect to the Colorado River, Legal staff will continue with the defense of the QSA, both in state and federal courts; enforce existing agreements; and protect Metropolitan's rights to receive water. The Legal Department also will be involved in arbitration with the San Luis Rey Indian Water Authority regarding an agreement with Metropolitan to purchase conserved water. Legal staff will continue to work with General Manager's staff on the Imperial Irrigation District issue relating to the Salton Sea.

Other water supply matters include the litigation relating to the Monterey Amendment; routine exchanges and transfers, as well as Metropolitan's replenishment policy.

In the Finance area, Legal will continue to support the Finance staff in Metropolitan's financing activities, including coordinating with the State Water Contractors and the Department of Water Resources to look at potential mechanisms for financing implementation of the Bay-Delta Plan and any conveyance facilities if that Plan goes forward. Legal also will continue to defend Metropolitan in the ongoing rate litigation.

In Operations, Legal staff will continue routine work with respect to service connections, maintenance operations and environmental compliance.

In Capital Projects, Legal staff works with Engineering on capital contracts and construction claims, as well as construction litigation. Staff also assists with procurement contracts, e-discovery and other information technology-related matters.

Legal staff will assist the Real Property Group with responses to the Request for Proposals for the Palo Verde Irrigation District property; ongoing monitoring regarding the Bright Source and Axio projects; and outstanding issues relating to the Western Center at Diamond Valley Lake.

The Legal Department routinely responds to Brown Act, Political Reform Act and Public Records Act questions and provides guidance on board governance and compliance.

Ms. Scully anticipates some modifications to Metropolitan's Administrative Code, such as proposed amendments which would allow Metropolitan to debar contractors to preclude irresponsible contractors from bidding on Metropolitan projects for a period of time.

The Legal Department continues to assist in managing energy costs, working in conjunction with the State Water Contractors on issues relating to energy expenses for the State

Water Project; monitoring proceedings filed by Edison and other utilities for rate hikes, which often has significant financial impacts; and tracking of the Hoover Power legislation.

With respect to workforce development, the Legal Department will continue to defend Metropolitan in all employee lawsuits, grievances, PERB matters, union negotiations, as well as continued support of the Human Resources Division to provide training for managers to try and reduce potential litigation, problems and grievances.

Regarding growth and sustainability, Legal staff will continue to monitor legislation in this area and work with the General Manager's staff on implementation of the conservation program.

In administrative matters, the Legal Department will continue to work with outside counsel to ensure favorable rates while continuing effective representation. Ms. Scully stressed the cost-efficiency measure of using staff paralegals to assist with litigation, as many law firms charge \$200-\$350 an hour for paralegal time. Legal staff also will continue to coordinate responses to Public Records Act requests (PRAs) for the District. Because of the amount of requests received by Metropolitan, the Legal Department developed a protocol for tracking and responding to PRAs in an effort to streamline and reduce the amount of staff time spent on redundant requests.

Motion Carried: Moved: Fleming      Seconded: Record

c. Subject: **Interim General Counsel's Annual Report on fiscal year 2010/11 Business Plan Accomplishments**

Presented by: Interim General Counsel Marcia Scully

Interim General Counsel Marcia Scully referred the Committee to her Business Plan Accomplishments report.

- d. Subject: **Report on *San Luis & Delta-Mendota Water Authority, et al. v. Salazar, et al.*, USDC Case No. 1:09-CV-407 OWW GSA, and consolidated cases; *San Luis & Delta Mendota Authority, et al. v. Locke, et al.*, USDC Case No. 1:09-CV-1053 OWW DLB, and consolidated cases; *Watershed Enforcers v. California Dept. of Water Resources, et al.*, Alameda County Superior Court No. RG06292124; *State Water Contractors v. California Dept. of Fish & Game, et al.*, Sacramento County Superior Court Case No. 34-2009-80000203; *Central Delta Water Agency v. California Dept. of Water Resources, et al.*, Sacramento County Superior Court Case No. 34-2009-80000269. (Closed Session)**

Presented by: Interim General Counsel Marcia Scully

During her report on monthly items, Interim General Counsel Marcia Scully reported in open session that there is still no ruling on the salmon biological opinion case. On the Delta smelt case, all of the parties have filed appeals of that ruling.

The hearings on the Fall X2 Reasonable and Prudent Alternative (RPA) remedy are scheduled to take place in Judge Wanger's court July 26 to July 29.

No action was taken.

- e. Subject: **Report on *Orange County Water District v. Northrop Corporation*, Orange County Superior Court Case No. 04CC00715. (Closed Session)**

Presented by: Interim General Counsel Marcia Scully

Closed Session: In closed session the Committee heard a report on item 6e. No action was taken.

## 7. FOLLOW-UP ITEMS

None

**8. FUTURE AGENDA ITEMS**

Director Peterson asked for an update on the Monterey Amendment litigation.

Next meeting will be held on August 16, 2011.

Meeting adjourned at 10:02 a.m.

Robert Wunderlich  
Chair