

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**January 10, 2012**

Chair Wunderlich called the meeting to order at 8:31 a.m. in Committee Room 2-145 at Metropolitan's Headquarters.

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

Member absent: Director Ackerman

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

Staff present: Scully, Bennion, Bennett, Breaux, Burman, H. Diaz, Gagar-Downing,  
Hasencamp, M. Hughes, Ivey, D. Jones, Kear, Kightlinger, Man, Miyashiro,  
Patterson, Riss, F. Rodriguez, Upadhyay, von Haam 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 DECEMBER 13, 2011**

Approved

Motion: Hawkins

Seconded: Edwards

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

None

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

**8-3**      Subject:                 **Report on *San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case No. CPF-10-510830*; and authorize an increase in the maximum amount payable under contract with Morrison & Foerster for legal services by \$800,000 to an amount not to exceed \$900,000. (Closed Session)**

Presented by:               Interim General Counsel Marcia Scully

Closed Session:           Directors Heidel, Lewinger, Steiner and Wilson, representing the San Diego County Water Authority, withdrew from the meeting for this item.

In closed session the Committee heard a report on Item 8-3. In open session the Committee voted to adopt the CEQA determination and authorize the Interim General Counsel to amend the contract for legal services with Morrison & Foerster to increase the maximum amount payable by \$800,000 to an amount not to exceed \$900,000 in the *San Diego County Water Authority v. Metropolitan Water District of Southern California* litigation.

Motion Carried:          Moved: Fleming                         Seconded: Ballin

Abstained: Directors Heidel and Steiner

**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 introduced three new staff members of the Legal Department; two attorneys and one paralegal. Attorney Michael Hughes, formerly of the California Attorney General's office, has a great deal of experience in environmental and natural resource law. He will be working primarily on Bay-Delta and Colorado River matters. He will assist Adam Kear and Becky Sheehan on

Bay-Delta issues and Joe Vanderhorst on the arbitration with the Indian Water Authority. Mr. Hughes fills a position that was converted from a vacant administrative position to an attorney position.

Secondly, a secretarial position was converted into a paralegal position. Fermin Rodriguez is an experienced litigation paralegal who has also managed and trained paralegals while at a private law firm. He also has extensive experience with computer technology and legal software programs, which will be helpful in getting the Legal Department up-to-speed in that area.

Finally, with Jaime Roberts' retirement at the end of December, the Legal Department moved quickly to hire Eddie Diaz. Mr. Diaz has worked extensively in public agencies, both as inside counsel and outside special counsel. He will work primarily on construction and real estate matters. He will be Mark Parsons' back-up as the attorney for the Engineering & Operations Committee.

Ms. Scully then asked Senior Deputy General Counsel Adam Kear to discuss the Sacramento Regional County Sanitation District (SRCSD) discharge permit issue. Mr. Kear reported that Metropolitan has been concerned with the facility for water quality reasons and particularly with regard to the ammonia being discharged into the Delta and its impact on the food web. At the end of 2010, Metropolitan was successful in persuading the Regional Board to impose some stringent new discharge limits on the SRCSD plant. The new permit requirements were for nitrification/denitrification for nitrogen removal and for tertiary filtration. They appealed the Regional Board's order to the State Water Resources Control Board (State Board) and the process is ongoing.

Under the State Board regulations, after the petition for review is deemed complete, the State Board is required to render a decision within 270 days. However, the State Board has an option to consider the appeal on its own motion, which lifts the 270-day clock. The State Board exercised that option in the fall and has estimated that they will render a decision on this permit in the spring. The 270-day clock expired in December. In a very surprising move, SRCSD has taken the position that the appeal is denied, based on the fact that the clock has run, and filed a lawsuit on December 30 in Sacramento Superior Court challenging both the Regional Board and the State Board, seeking to overturn the permit. SRCSD is seeking, on an ex parte basis, a stay or lifting of the permit requirements for tertiary filtration. Metropolitan has not been named in the lawsuit; however, we may be

intervening to try and uphold the permit requirements. Metropolitan is working very closely with the Regional Board to get the case dismissed for failure of SRCSD to exhaust their administrative remedy, which is the ongoing appeal before the State Board.

Interim General Counsel Scully brought up one final item relating to AB 32. She reported that Metropolitan had recently testified at the Air Resources Board (ARB) relating to the cap-and-trade program. Metropolitan's testimony had to do with the fact that the ARB is providing free allowances to utility companies but is not providing similar free allowances to Metropolitan, which would require Metropolitan to purchase credits for the power that we import.

At the end of December, there was a case decided on a separate component of AB 32, the Low Carbon Fuel Standard. In this case (*Rocky Mountain Farmers Union v. Goldstein*), the court ruled that the fuel standards violate the Commerce Clause of the Constitution by impermissibly regulating out-of-state fuel producers. Ms. Scully stated she thinks this may impact the cap-and-trade program because arguably requiring people to pay additional fees to import power could also be deemed as an indirect regulation of out-of-state energy producers.

**b. Subject: Oral report on FPPC New Gift Rules**

Presented by: Assistant General Counsel Sydney Bennion

Assistant General Counsel Sydney Bennion reported that the Fair Political Practices Commission (FPPC) substantially revised its gift rules to make the rules simpler, to close perceived loopholes and to clean up confusion from past revisions. The new rules became effective January 1, 2012.

The FPPC consolidated its Guide to Gift Regulations. It now includes gift definitions, reporting and disclosure rule exceptions, valuation and disclosure rules and gifts resulting in a disqualifying conflict of interest or the requirement of filing a lobbyist activity expense report.

The basic rules are the same. A gift is defined as a "payment" giving to an official anything of value where the official does not give value back in return. Gifts to public officials: (1) may be reportable for anything of \$50 or more; (2) may result in a disqualifying conflict of interest; (3) may be reportable as a lobbying expense; and (4) are subject to an

annual aggregate limit of \$420 (through 12/31/12).

Some rules that have been clarified as a result of the revisions: (1) value of charter flights; (2) gifts of unused collectible tickets; (3) ceremonial roles at special events; (4) home hospitality; and (5) gifts given through family members.

Under the new rules, the value of a charter flight will be established by either the first-class airfare rate or the cost of the charter divided by the number of passengers. Unused collectible tickets, which are not used by the official but transferred to another person, have a value and must be reported. When an official attends an event in a ceremonial capacity and actively participates, it does not have to be reported. In addition, the official is entitled to bring one guest, who is also exempt. The home hospitality exemption has a new requirement that the donor must have an existing social relationship with the public official, that the donor be in attendance at the event, and the event itself must be unrelated to the official's position. Finally, with respect to gifts given through family members, the range of persons covered has expanded. Also, if the donor is involved in a matter before the official's agency, or regularly seeks to do business with the agency, and the official reasonably foresees participating in such business decisions within 12 months of the time the gift is made, the gift would be reportable.

A new rule has been established by the FPPC with respect to dating relationships. The FPPC recognizes that public officials do have social relationships and currently gifts commonly exchanged in a dating relationship are exempt. However, the revised rule now specifies that if the donor is a lobbyist to the official's agency, has a contract pending before the agency or is regulated by the agency, then gifts in excess of the gift limit, \$420 per year, may be the source of a conflict of interest for the public official. Therefore the public official will be prohibited from participating in decisions involving the donor's business.

Other types of relationships that are recognized by the FPPC are (1) reciprocal exchanges in a social relationship (except where a lobbyist is involved); (2) benefits of a guest attending a wedding; (3) bereavement offerings for the loss of a relative; (4) acts of neighborliness; (5) acts of human compassion; and (6) other gifts in existing personal or business relationships that are clearly unrelated to the official's position.

- c. 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

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

## 7. FOLLOW-UP ITEMS

None

## 8. FUTURE AGENDA ITEMS

None

Next regular meeting will be held on February 14, 2012.

Meeting adjourned at 9:40 a.m.

Robert Wunderlich  
Chair