

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

February 14, 2012

Chair Wunderlich called the meeting to order at 8:34 a.m. in Committee Room 2-145 at Metropolitan's Headquarters.

Members present: Chair Wunderlich
Directors Ackerman, Dick, Edwards, Fleming, Griset, Hawkins, Heidel and Record

Members absent: Vice Chair Quiñonez and Directors Ballin, Camacho and Steiner

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

Staff present: Scully, Bennion, Bennett, Beatty, Breaux, Burman, Gagar-Downing, Green, Hiltcher, G. Johnson, Kear, Kightlinger, Man, Mares, Miyashiro, Patterson, R. Ramirez, Riss, Schlotterbeck, D. Smith, Upadhyay, Waade, Young and Zinke

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 JANUARY 10, 2012

Approved

Motion: Hawkins

Seconded: Heidel

Chair Wunderlich gave an update on the search process for General Counsel. The search firm, Korn Ferry, identified an initial set of candidates, which the subcommittee helped to narrow down for interviews. The subcommittee then performed in-person interviews. Korn Ferry is currently conducting reference checks and the subcommittee will meet again to further narrow the list. They then hope to bring to

the March Board meeting the final two or three candidates for the Board to meet, interview and select the new General Counsel.

Chair Wunderlich thanked the members of the subcommittee, Directors Jesús Quiñonez, Linda Ackerman, Sylvia Ballin, James Edwards and Daniel Griset.

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 reminded the directors that their Form 700 filings are due.

Settlement has been reached in the *Village Retail v. Rasic* litigation. Metropolitan will be receiving an additional \$250,000 for reimbursement in attorneys' fees from the insurance company.

She also reported on *The Navajo Nation v. U.S. Department of Interior* lawsuit. In 2003, the Navajo Nation filed litigation against the federal government alleging they had been improperly deprived of the Colorado River allocation. The Colorado River contractors sought to intervene in that matter; Metropolitan was allowed to intervene but not allowed to participate. There have been ongoing negotiations since that time. A settlement has been reached; however, implementation will be very expensive. As proposed, the water would come from Arizona's allocation and involves construction of a significant amount of infrastructure and

diversion of water from the Central Arizona Project. Federal legislation will be introduced soon if all parties agree to the stipulation. The stipulation settles permanently all claims relative to the Little Colorado. Because of the cost implications and the complications in the Lower Colorado River, the stipulation provides that the matter would be tolled until December 2022. If the parties reach an agreement and Congress passes legislation, this matter would be resolved.

Ms. Scully then asked Senior Deputy General Counsel Adam Kear to give a report on the Central Contra Costa Sanitary District (CCCSD) and Vallejo Sanitation and Flood Control District (Vallejo) discharge permits. Metropolitan is concerned about ammonia removal at these two plants because the release of ammonia is changing the nutrient balance, which is having an impact throughout the food web. Also, ammonia is directly toxic to fish. The Delta smelt, longfin smelt and other pelagic species are at issue.

In October and November, the San Francisco Board issued draft permits for these two dischargers, with no discussion of the ammonium concern with respect to food web habitats. The water agencies, including Metropolitan, commented on the draft permits. The San Francisco Board responded to the comments and acknowledged that ammonium is a concern; however, they did not impose ammonia removal for these two plants.

At the same time, CCCSD approached the water agencies in January to discuss the water agencies' concerns. Those discussions centered on studies the water agencies would perform to look at the effects of the discharge on the ecosystem, as well as studies CCCSD would perform to advance adding nitrification facilities when and if the Regional Board would impose those. The idea around these discussions was whether the water agencies could, with the Regional Board's approval, impose these conditions as part of CCCSD's permit. The negotiations proved successful as these studies are now part of CCCSD's permit.

Meanwhile, the water agencies provided supplemental comments to the Regional Board, as well as proposed discharge conditions. The San Francisco Board held a hearing last week. Although the science clearly shows that ammonium is harmful to the Bay-Delta ecosystem and that science is sufficient to impose ammonia removal, the Regional Board did not impose such requirements. The water agencies requested that studies be conducted to apply the established scientific principles to both dischargers and investigate and prepare for treatment upgrades. While

negotiations for CCCSD made this a condition for their permit, it did not apply to Vallejo.

This leaves Metropolitan with a decision whether to appeal the Vallejo permit to the State Board. Mr. Kear will report back on the decision at March's Committee meeting.

b. Subject: Biennial 2012/13 and 2013/14 General Counsel Budget

Presented by: Interim General Counsel Marcia Scully

Interim General Counsel Marcia Scully presented the General Counsel's proposed biennial budget for fiscal years 2012/13 and 2013/14.

The Department includes 17 attorneys and three paralegals. The mission and core priorities of the Department are to provide independent legal advice and representation to the Board, its committees, and staff in all areas. The strategies and objectives remain much the same as prior years with a heavy focus on water supply and Bay-Delta issues. Water quality and energy matters will be a focus of the Department because of the *Orange County Water District v. Northrop* and *Hyatt-Thermalito* litigation. Workforce issues are fairly consistent and finance matters will be a major focus with rate setting being completed in upcoming months, the Long Range Finance Plan, and the rate litigation.

The challenges for the Legal Department include increased funding for Bay-Delta issues, water quality and water rate litigation. Another major challenge is updating the Department's technological capabilities in order to manage the amount of electronic data being handled by the Department and outside counsel.

The 2012/13 budget asks for an increase of approximately \$2.1 million from last year's budget. This reflects primarily a \$300,000 increase for labor in cost of benefits and merit increases, an additional expenditure for equipment, and the majority for outside counsel.

For the 2012/13 O&M budget, Ms. Scully anticipates approximately \$7.7 million for labor, \$6.5 million for outside counsel and \$430,000 for everything else. For 2013/14, there is a modest increase in labor, which involves merit increases and the increase in cost of benefits. The proposed budget shows a slight decrease in professional services because it is based on the reduced capital program and anticipates a reduction in Bay-Delta expenditures by that time.

- c.** Subject: **Report on *Paulek v. California Department of Water Resources, et al.*, Riverside County Superior Court Case No. RIC1120142. (Closed Session)**
- Presented by: Senior Deputy General Counsel John Schlotterbeck
- Closed Session: In closed session the Committee heard a report on Item 6c. No action was taken.
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- 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
- Closed Session: In closed session the Committee heard a report on Item 6d. No action was taken.
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- e.** 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. (Closed Session)
- Presented by: Interim General Counsel Marcia Scully
- Closed Session: Directors Heidel, Lewinger 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 6e. No action was taken.

f. Subject: Report on *Alameda County Flood Control & Water Conservation District Zone 7, et al. v. California Department of Water Resources*, Sac. Sup. Ct. Case No. 05AS01775.
(Closed Session)

Presented by: Senior Deputy General Counsel John Schlotterbeck

In closed session the Committee heard a report on Item 6f.
No action was taken.

7. FOLLOW-UP ITEMS

None

8. FUTURE AGENDA ITEMS

None

Next regular meeting will be held on March 13, 2012.

Meeting adjourned at 10:18 a.m.

Robert Wunderlich
Chair