



- Board of Directors
Audit and Ethics Committee

8/20/2013 Board Meeting

REVISED 8-1

Subject

Adopt Ethics Office policy principles and investigation procedures; authorize fiscal year 2013/14 budget increase of \$245,000 for staffing and professional services necessary to perform broader range of investigative and policy functions; and revise Ethics Office work plan for fiscal year 2013/14

Executive Summary

At its meeting on July 23, 2013, the Audit and Ethics Committee deferred acting upon proposed Policy Principles, Investigation Guidelines and budget modification; requested additional information about effect of changes in the investigation practices; and suggested additional consultation between the Ethics Officer and General Counsel concerning these proposals. Since then, the Ethics Officer has undertaken additional consultation with the General Counsel and other senior staff resulting in several changes to the proposed board action presented to the Audit and Ethics Committee at the July 23 meeting. In addition to her request for adoption of the Ethics Office Policy Principles and budget modification for fiscal year 2013/14, the Ethics Officer requests that the Board approve investigation procedures, defer action on the proposed Investigation Guidelines, and revise the Ethics Office fiscal year 2013/14 work plan to include workshops. The purpose of the workshops is to establish the scope of Ethics Office responsibilities and review in greater detail the proposed Investigation Guidelines.

Details

During its prior consideration of this matter, the committee requested clarifications about the effects of the proposed changes on the existing investigation and review processes for complaints or concerns submitted to the Ethics Office. Although these questions arose in the context of reviewing the proposed Investigation Guidelines, they are relevant to the proposed investigation procedures that are among the subjects of the current request. For the committee's convenience, below is a synthesis of the information sought by the committee presented in a question and answer format.

What is the proposed process? For allegations of ethics violations, the Ethics Officer would be responsible for initial screening, preliminary investigation, and formal investigation. If preliminary investigation indicated an allegation was unsubstantiated, the matter would be closed with a standardized memorandum for the file. If a matter moved on to formal investigation, the Ethics Officer would conduct or oversee the investigation and prepare the report and findings of fact. The completed report would be submitted to the appropriate department or board committee for action (if any).

How is this process different? The primary difference under the proposed process is that the decision whether to initiate formal investigation and the conduct of the investigation happen within the Ethics Office rather than through a multi-member committee.

What is the benefit of this process? For matters designated to be reviewed within the Ethics Office, the process insulates senior managers and directors from the details of allegations and pending investigations. In so doing, it can create a beneficial firewall between fact-finding and policymaking, which tends to enhance perceived objectivity and integrity of management or board actions that follow from

investigation results. The process can increase expectations of confidentiality by potential sources of information while protecting the due process and fairness interests of potential subjects.

How would allegations regarding directors be handled under this process? If a complaint alleged an ethics violation by a director, any formal investigation of the matter would occur by an outside investigator. Although the investigator would be under the supervision of the Ethics Officer, the Ethics Officer would refrain from direct interaction or discussion with the outside investigator pending completion of the report. This separation is necessary to avoid a conflict of interest by the Ethics Officer, because of the direct reporting relationship.

What professional resources does the Ethics Department have currently? The Ethics Department has three full-time employees -- the Ethics Officer, ethics educator, and intake liaison, along with a professional services budget of \$15,000 for fiscal year 2013/14.

Why does the Ethics Department need an additional staff position? Implementing a more comprehensive and independent ethics program will require additional human resources. Besides investigations, there is significant other policy-related work that needs to be done that is outside the expertise and time availability of the Office's two current staff members. This work includes revisions of procedures, research into metrics and policy directions of similar offices in state and local governments, and developing program materials including proposals for appropriate areas that should be handled within the Ethics Office compared to matters that should be handled exclusively within other departments. In addition, this staff position will be responsible for handling a certain number of investigations, particularly in subject matter areas outside the expertise of current staff. For these reasons, addition of one additional position is critical to achieving the mission and goals of the Ethics Department.

What functions would be performed by outside investigators? The Ethics Officer would utilize outside investigators in cases when necessary to avoid a conflict of interest or when internal resources were unavailable for other reasons.

This letter recommends adoption of Policy Principles set forth in [Attachment 1](#), investigations procedures set forth in [Attachment 2](#), and fiscal year 2013/14 budget adjustments as set forth in [Attachment 3](#). In addition, it recommends revision of the Ethics Office 2013/14 fiscal year work plan to include workshops for addressing the scope of the Ethics Office responsibility and to revisit the proposed Investigation Guidelines.

Policy

Metropolitan Water District Act § 126.7 [Establishment of Office of Ethics]

Metropolitan Water District Administrative Code Section 7140: Violations of Ethics Provisions

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed actions are not subject to CEQA and

- a. Adopt the policy principles in [Attachment 1](#);
- b. Adopt the investigations procedures in [Attachment 2](#); and
- c. Authorize adjustment to the Ethics Department fiscal year 2013/14 budget.

Fiscal Impact: Up to \$245,000

Business Analysis: Staffing and professional services necessary to perform broader range of investigative functions and enhance effectiveness of Office of Ethics

Option #2

Adopt the CEQA determination that the proposed actions are not subject to CEQA and

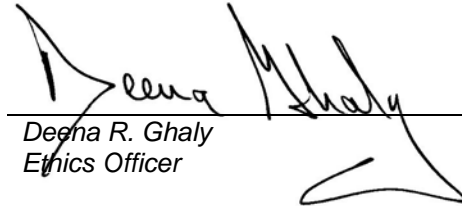
- a. Do not adopt policy principles stated in [Attachment 1](#);
- b. Do not adopt investigations procedures as stated in [Attachment 2](#); and
- c. Do not authorize adjustment to the Ethics Department fiscal year 2013/14 budget as described to provide necessary staffing assistance and professional services.

Fiscal Impact: No direct fiscal impact

Business Analysis: Staffing and professional services necessary to perform broader range of investigative functions and to enhance effectiveness of Office of Ethics would not be available.

Staff Recommendation

Option #1


Deena R. Ghaly
Ethics Officer

8/15/2013

Date

[Attachment 1 –Policy Principles](#)

[Attachment 2 – Investigations Procedures](#)

[Attachment 3 – Office of Ethics Budget and Functions](#)

Office of Ethics Policy Principles

In 2003, the Board of Directors established the Office of Ethics as mandated by 1999 amendments (Senate Bill 60) to the Metropolitan Water District Act. These policy principles are necessary to continue development of an effective and responsive ethics function.

Purpose

The operations of the Ethics Office are intended to assist the Board of Directors, officers, and employees in accomplishing Metropolitan's mission: "To provide Metropolitan's service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way."

The role and purpose of the Office of Ethics is to undertake its assigned duties and activities in an objective, independent, and professional manner in order to promote adherence by all Metropolitan officials and representatives to applicable laws, its ethics-related provisions, and the highest standards of ethics in government.

The activities of the Office of Ethics are intended to promote the principles of transparency, public accountability, and public trust bestowed upon officials of government.

To meet these goals and purposes, the Board of Directors adopts the following policy principles.

Ethics Code principles

1. *Clarity*: The enforceable provisions of ethics provisions shall be clear and stated in plain, simple language.
2. *Objectivity*: The ethics provisions shall be written in a manner to facilitate objective and consistent application to the unique facts of any particular case. Provisions articulated as broad policy goals or aspirations shall be considered as legislative background relevant to interpreting the objective standards of conduct.
3. *Focused ethics policies*: The Ethics Officer shall have a clearly defined and limited scope of responsibility and authority. In general, the terms of the ethics provisions shall delineate the subject matter and duties within the sole purview of the Ethics Office.
4. *Accountability*: The Ethics Officer is solely accountable for the manner in which it performs its delegated duties. In order to perform those duties, the Ethics Office must have organizational support and adequate resources to perform its functions competently and professionally.
5. *Policy guidance and oversight*: The Board of Directors and the Audit and Ethics Committee have review and oversight responsibility over the substance of the ethics

provisions, investigatory priorities and guidelines, and any other Ethics Office policies. This review should be performed on an annual basis.

Investigations principles

1. *Investigations:* The Office of Ethics shall establish investigatory functions and reporting process to ensure an objective, thorough, and unbiased inquiries promoting the best interests of Metropolitan.
2. *Integrity and independence:* The Ethics Officer and staff shall be free, both in fact and appearance, from impairments to independence; must be independent organizationally; and must maintain an independent attitude in its operations and interactions with the Board of Directors, senior staff, and employees. The findings and conclusions in Ethics Office investigations shall be grounded only in fact, unaffected by internal or external political considerations.
3. *Quality and professionalism:* The investigatory process must adhere to the best standards of investigative processes. Individuals conducting investigations must collectively possess professional proficiency for the tasks required. In order to perform those duties, the Office must have adequate resources and organizational support to perform its functions competently and professionally.
4. *Procedural justice:* The investigatory process must provide, both in fact and appearance, procedural justice. All Metropolitan personnel are entitled to impartiality, fairness, appropriate confidentiality, and due process. The procedures of the investigatory process must, to the extent possible, protect persons bringing forward allegations of Ethics Code violations and cooperating witnesses. They must, to the extent possible, protect the privacy rights of any subject of an allegation. Retaliation of any kind against complainants, witnesses, or others involved in the investigatory process is a serious offense and subject to separate investigation by the Ethics Officer.
5. *Outcome of investigations:* The findings and conclusions within Ethics Office investigations are factual and administrative in nature. Authority and responsibility for actions or decisions that may result from the outcomes of the Ethics Office's investigations and other work lie solely within the discretion of the Board of Directors or senior management.

Investigation Procedures

Proposed

Preliminary review

1. Ethics Office determines whether the alleged facts, if true, are within the subject matter scope of the Ethics Office.
2. Ethics Office conducts preliminary investigation to assess the credibility of the allegation and to determine whether a formal, full investigation is warranted.
3. If the Ethics Officer determines there is reasonably sufficient evidence of a violation of Metropolitan’s ethics rules, a formal investigation is initiated. Metropolitan’s directors, officers and employees are required to cooperate with Ethics Office investigations to the same extent as required under Operating Policy H-07 as revised on 11/5/12.

Investigation

1. Ethics Officer oversees and directs full investigation, using internal resources when feasible.
2. In cases involving allegations against Directors, Ethics Officer engages outside investigator and generally is recused from the investigation process.

Report and findings

1. Upon completion of investigation, Ethics Officer prepares a full report of evidence and findings, including whether evidence establishes a breach of Metropolitan’s ethics rules.
2. Ethics Officer forwards full investigation report to Department Head or Executive Committee. [or: Audit and Ethics Committee, Inquiry and Review Committee].
3. Ethics Officer prepares summary report with abbreviated account of allegations and conclusions for periodic reports to the Board of Directors and available for public review as per SB 60. All other records and reports of Ethics Office investigations are confidential and subject to all confidentiality requirements set forth in Operating Policy H-07 as revised on 11/5/12.

Subsequent action

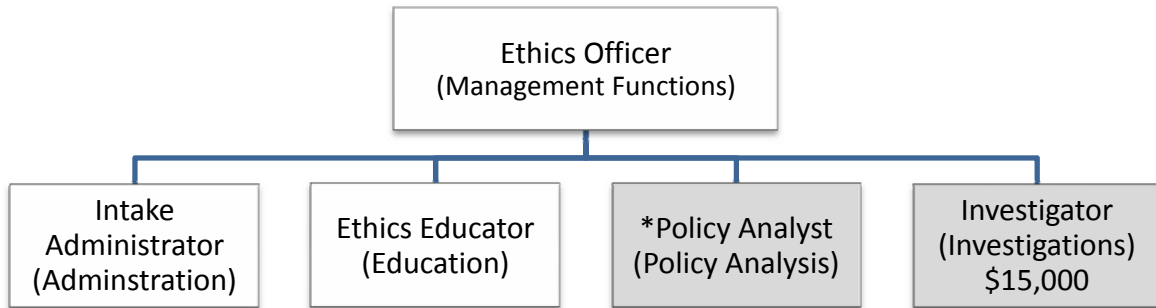
1. Department Head or Board of Directors determines any subsequent action.
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Detailed Description of Recommended Fiscal Year 2013/14 Budget Adjustment

Ethics Office Duties and Responsibilities

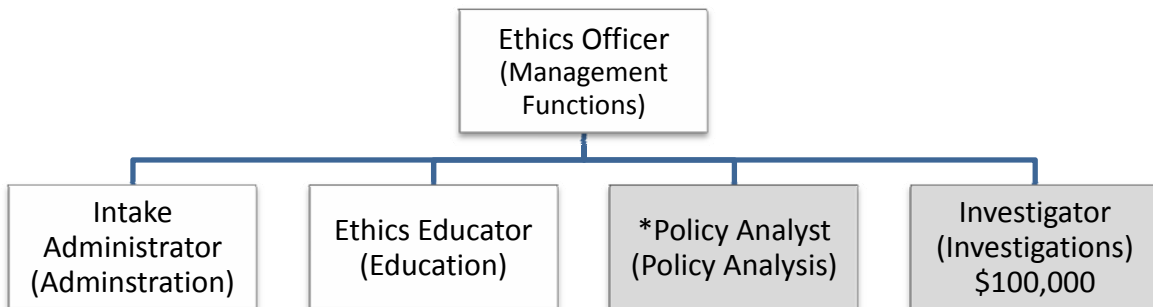
Management	<ul style="list-style-type: none"> - Program development - Program oversight - Board communication and planning 	<ul style="list-style-type: none"> - Senior management coordination and meetings - Supervision - Oversight of investigations
Administration	<ul style="list-style-type: none"> - Case docketing - Intake Administration - Matter Tracking System 	<ul style="list-style-type: none"> - Records management administration - Budget Analysis - Procurement
Education	<ul style="list-style-type: none"> - Development of Training programs - Performance of education assessments - Preparation of website content - Drafting of publications 	<ul style="list-style-type: none"> - Providing advice - Performing mediation services - Implementing outreach
Policy analysis	<ul style="list-style-type: none"> - Risk assessment - Drafting proposed rules and procedures - Identification of procedural justice issues - Research into comparable local, state, and federal ethics and compliance functions - Preparation of board and committee presentations 	<ul style="list-style-type: none"> - Preparation of substantive correspondences - Preparation of case memoranda - Drafting of strategic planning documents - Gathering and analysis of interdepartmental input
Investigation	<ul style="list-style-type: none"> - Initial case assessment - Research into applicable policies and rules - Planning of investigation - Identification of evidence - Initial document review - Preparation for witness interviews - Conduct of interviews 	<ul style="list-style-type: none"> - Post-interview analyses - Identification and review of additional evidence or witnesses - Authentication and comparative analysis of conflicting facts - Drafting final report - Organize and index evidence for permanent files

CURRENT STAFFING & RESOURCES



* Temporary staffing funded by Legal Department

PROPOSED STAFFING & RESOURCES



* Permanent staffing funded by Ethics Department

