

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

ADJOURNED LEGAL AND CLAIMS COMMITTEE

November 19, 2013

Chair Fleming called the meeting to order at 9:01 a.m. in Committee Room 2-145 at Metropolitan's Headquarters.

Members present: Chair Fleming, Vice Chair Wunderlich, Directors Ackerman, Ballin, Camacho, Dear, Dick, Edwards, Griset, Mudd, Record, and Steiner.

Members absent: Directors Quiñonez and Vasquez.

Other Board members present: Directors Babcock, Barbre, Brown, Evans, Hogan, Kurtz, Lefevre, Lewinger, Morris, J. Murray, Peterson, Pringle and Touhey.

Staff present: Scully, Bennion, Beatty, Breaux, Downing, Ghaly, Ivey, Johnson, Kightlinger, Man, Masouredis, Miyashiro, Riss, and Zinke.

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

No members responded.

2. APPROVAL OF THE MINUTES OF THE LEGAL AND CLAIMS COMMITTEE MEETING HELD OCTOBER 8, 2013.

Motion Carried Moved: Director Mudd Seconded: Director Edwards

Votes: Unanimous

3. CONSENT CALENDAR ITEMS – ACTION

7-5 Subject: **Approve amendments to the Metropolitan Water District Administrative Code to conform to current laws, practices and regulations.**

Presented by: Assistant General Counsel Sydney Bennion

In open session, Assistant General Counsel Sydney Bennion gave a report on this item.

Motion: Adopt the CEQA determination that the proposed action is not a project under CEQA and approve amendments to the Administrative Code set forth in Attachment 2 to the board letter to reflect the changes recommended in the letter.

Motion Carried Moved: Director Edwards Seconded: Director Dick

Votes: Unanimous

OTHER BOARD ITEMS – ACTION

8-5 Subject: **Authorize increase in maximum amount payable under contract with Richard B. Deriso for expert consultant services and litigation support by \$100,000 to a maximum of \$600,000; and report on *Consolidated Delta Smelt Cases*, USDC Case No. 1:09-CV-407 LJO-DLB, and *Consolidated Salmonid Cases*, USDC Case No. 1:09-CV-1053 LJO-DLB.**

Presented by: Chief Deputy General Counsel Linus Masouredis

Chief Deputy General Counsel Linus Masouredis gave a report on this item in closed session. The motion and vote took place in open session.

Motion: Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and authorize an increase in Dr. Richard Deriso's contract by \$100,000 to a maximum amount of \$600,000.

Motion Carried Moved: Director Steiner Seconded: Director Edwards

Votes: Unanimous

8-6 Subject: **Report on existing litigation; San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830 and CPF-12-512466; and authorize increase in maximum amount payable under contracts with (1) Bingham McCutchen LLP for legal services by \$3 million to an amount not to exceed \$8 million; (2) Morrison & Foerster LLP for legal services by \$3 million to an amount not to exceed \$6 million; (3) Hanson Bridgett LLP for legal services by \$300,000 to an amount not to exceed \$1.1 million; and (4) Executive Presentations, Inc. for trial and other graphics services by \$600,000 to an amount not to exceed \$950,000.**

Presented by: Assistant General Counsel Heather Beatty

Closed Session: Directors Hogan, Lewinger, Mudd, and Steiner, representing the San Diego County Water Authority, withdrew from the meeting for the report on this item.

In closed session, Assistant General Counsel Heather Beatty gave a report on this item. The motion and vote took place in open session.

Directors Mudd and Steiner returned to the meeting after the closed session.

Motion: Adopt the CEQA determination that the proposed actions are not subject to the provisions of CEQA and authorize an increase in the maximum amount payable under contracts with:

- a. Bingham McCutchen LLP by \$3 million to an amount not to exceed \$8 million;
- b. Morrison & Foerster LLP by \$3 million to an amount not to exceed \$6 million;
- c. Hanson Bridgett LLP by \$300,000 to an amount not to exceed \$1.1 million; and
- d. Executive Presentations, Inc. by \$600,000 to an amount not to exceed \$950,000.

Motion Carried Moved: Director Edwards Seconded: Director Record
Abstained: Directors Mudd, Steiner, and Wunderlich

Votes: 9 = Yes; 3 = Abstain

4. BOARD INFORMATION ITEMS

None

5. COMMITTEE ITEMS

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

Presented by: General Counsel Marcia Scully

General Counsel reported that mediation took place in the *Oscar Renda Construction v. Metropolitan Water District* lawsuit, although it did not result in a settlement. On December 3, a trial setting hearing will take place.

She also reported on the Delta Plan litigation; no significant progress has been made.

General Counsel also updated the committee on the *Orange County Water District v. Northrop* matter. On October 29, Judge Dunning issued her final decision for Phase 1 of the trial, which was largely in favor of the defendants and against the Orange County Water District (OCWD). The court made a finding that Colorado River water is a major source of perchlorate in the groundwater basin, but also that the replenishment activities of OCWD contributed to the contamination and made it more difficult to determine who was responsible for the volatile organic carbons, which were the original contaminant that was the basis for the case. The court also stated that OCWD is responsible for the remediation of nitrate and perchlorate in the north basin. It is possible that this decision could be appealed. The next step in the case is Phase 2, the jury trial, followed by Phase 3, if needed. Metropolitan is not a participant in Phases 1 and 2.

In another Orange County Water District groundwater contamination case, *OCWD v. Sabic*, relating to the south basin, Judge Weibenstock issued her final decision. It also largely finds in favor of the defendants against OCWD in that OCWD did not establish its right to recover under the California Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). There was some testimony indicating that Colorado River water could be implicated in the south basin, although there was also testimony that the two basins were not hydrologically related. Metropolitan is not a party in this case, but is monitoring it.

Ms. Scully also informed the committee of new legislation that takes effect January 1, 2014. Senate Bill 751 amends the Brown Act to require that public agencies report individual votes of every member of the legislative body. Therefore Metropolitan will be changing its voting procedures. At committee, members will raise their hands, as opposed to voice votes. At Board, roll call votes will be taken. If there are any no votes or abstentions on consent calendar items, that item will be voted on separately.

Finally, Ms. Scully informed the committee that Metropolitan received a letter from AFSCME with regard to the October Board vote on Department Head compensation. AFSCME requested documentation related to Department Head compensation and also raised some issues as to whether there were legal flaws in the manner in which

Board approval took place. Ms. Scully assured the committee that the vote was proper and will prepare a response to the union.

6. FOLLOW-UP ITEMS

None

7. FUTURE AGENDA ITEMS

Director Mudd asked for a briefing on Metropolitan's policy on recording and retention of Director, agency and ratepayer communications by Metropolitan staff. He also requested review of the different types of formats.

Next meeting will be held on December 10, 2013.

Meeting adjourned at 10:23 a.m.

David Fleming
Chair