

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

March 10, 2020

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

Members present: Chair McKenney, Directors Atwater, Camacho (entered 9:41 a.m.), Dick, Goldberg, Record, and Smith (entered 9:02 a.m.).

Members absent: Vice Chair Quiñonez, Directors Gharpetian and Murray.

Other Directors present: Board Chairwoman Gray, Directors Ackerman, Barbre, Blois, Butkiewicz, Cordero, Faessel, Hawkins, Hogan, Kurtz, Lefevre, McCoy, Morris, Ortega, Peterson, Pressman, Quinn, and Ramos.

Committee Staff present: Beatty, Kightlinger, Miyashiro, Scully, and Upadhyay.

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

None

Chair McKenney announced the lack of a quorum and passed over approval of the minutes.

3. MANAGEMENT REPORT

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

Presented by: General Counsel Marcia Scully

General Counsel Scully updated the committee on remaining issues in the *DWR v. All Persons Interested* validation action and related CEQA and CESA/Incidental Take Permit litigation.

She also reported on the *Food & Water Watch v. Metropolitan* appeal.

Finally, she informed the committee of a few actions the State Board is taking on setting contaminant levels for various contaminants.

Director Smith entered 9:02 a.m.

Chair McKenney announced a quorum was present and proceeded with item 2.

**2. APPROVAL OF THE MINUTES OF THE LEGAL AND CLAIMS COMMITTEE
MEETING HELD FEBRUARY 11, 2020**

Motion: Carried
Moved: Director Atwater Seconded: Director Record
Ayes: Directors Atwater, Dick, Goldberg, McKenney, Record, and Smith
Noes: None
Abstentions: None
Absent: Directors Camacho, Gharpetian, Murray, and Quiñonez

The motion passed by a vote of 6 ayes, 0 no, 0 abstain, and 4 absent.

4. CONSENT CALENDAR ITEMS – ACTION

None

5. OTHER BOARD ITEMS – ACTION

8-4 Subject: Authorize an increase of \$100,000, to an amount not to exceed \$300,000, for a contract for legal services with Hanson Bridgett LLP to provide legal advice on deferred compensation plans, other employee benefits, taxes, and CalPERS matters; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Presented by: No presentation was given

Motion: Authorize the General Counsel to increase the amount payable under its contract with Hanson Bridgett LLP by \$100,000 to an amount not-to-exceed \$300,000

Moved: Director Record Seconded: Director Dick
Ayes: Directors Atwater, Dick, Goldberg, McKenney, Record, and Smith
Noes: None
Abstentions: None
Absent: Directors Camacho, Gharpetian, Murray, and Quiñonez

The motion passed by a vote of 6 ayes, 0 noes, 0 abstain, and 4 absent.

8-5 Subject: Authorize increase of \$50,000, to an amount not-to-exceed \$350,000, for existing General Counsel contract with Olson Remcho LLP to review and make recommendations to modify the Ethics Office policies, procedures, guidelines and applicable provisions of Metropolitan's Administrative Code; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Presented by: General Counsel Marcia Scully

Motion: Authorize the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$50,000 to a maximum not-to-exceed \$350,000

Moved: Director McKenney Seconded: Director Atwater

Ayes: Directors Atwater, Dick, Goldberg, McKenney, Record, and Smith

Noes: None

Abstentions: None

Absent: Directors Camacho, Gharpetian, Murray, and Quiñonez

The motion passed by a vote of 6 ayes, 0 noes, 0 abstain, and 4 absent.

8-6 Subject: Approve amendments to the Metropolitan Water District Administrative Code to conform its public contracting provisions to current law and practices; the General Manager has determined that this action is exempt from or otherwise not subject to CEQA

Presented by: No presentation was given.

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

Moved: Director Record Seconded: Director Smith

Ayes: Directors Atwater, Dick, Goldberg, McKenney, Record, and Smith

Noes: None

Abstentions: None

Absent: Directors Camacho, Gharpetian, Murray, and Quiñonez

The motion passed by a vote of 6 ayes, 0 noes, 0 abstain, and 4 absent.

The following Directors provided comments or asked questions:

1. Director Smith

Director Camacho entered at 9:41 a.m.

8-7 Subject: Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; and authorize increase of maximum amount payable under contract with (1) Theodora Oringher PC for legal services by \$600,000 to an amount not to exceed \$700,000; and (2) Pacific Consultants Construction, Inc. for consulting services by \$50,000 to an amount not to exceed \$150,000 (Approp. 154170); the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. [Conference with legal counsel-existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

Presented by: Senior Deputy General Counsel Mark Parsons

In closed session, Senior Deputy General Counsel Mark Parsons gave a report on this item. In open session, the committee voted.

Motion: Award and authorize the General Counsel to increase the amount payable by amendment of the contracts with (1) Theodora Oringher PC for legal services by \$600,000 for an amount not to exceed \$700,000, and (2) Pacific Consultants Construction, Inc. for consulting services by \$50,000 for an amount not to exceed \$150,000.

Moved: Director Atwater

Seconded: Director Dick

Ayes: Directors Atwater, Camacho, Dick, Goldberg, McKenney, Record, and Smith

Noes: None

Abstentions: None

Absent: Directors Gharpetian, Murray, and Quiñonez

The motion passed by a vote of 7 ayes, 0 noes, 0 abstain, and 3 absent.

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

- a. None Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeal of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901 and A148266 and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; and the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025 [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

Presented by: Assistant General Counsel Heather Beatty

Directors Butkiewicz, Goldberg, Hogan, and Smith, 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. No action was taken.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

Request for a presentation on the State Water Contractors' procedure for deciding to initiate or intervene in litigation.

Next meeting will be held on April 14, 2020.

Meeting adjourned at 10:23 a.m.

Larry McKenney
Chair