



**SAWPA COMMISSION  
REGULAR MEETING MINUTES  
SEPTEMBER 3, 2019**

**COMMISSIONERS PRESENT**

Ronald W. Sullivan, Chair, Eastern Municipal Water District  
Kati Parker, Vice Chair, Inland Empire Utilities Agency  
Denis R. Bilodeau, Secretary-Treasurer, Orange County Water District  
Brenda Dennstedt, Western Municipal Water District [9:38 a.m.]  
T. Milford Harrison, San Bernardino Valley Municipal Water District

**COMMISSIONERS ABSENT**

**ALTERNATE COMMISSIONERS  
PRESENT; NON-VOTING**

June D. Hayes, Alternate, San Bernardino Valley Municipal Water District

**STAFF PRESENT**

Rich Haller, Larry McKenney, Karen Williams, Dean Unger, Carlos Quintero, David Ruhl, Ian Achimore, Katie Lucht

The Regular Commission Meeting of the Santa Ana Watershed Project Authority was called to order at 9:31 a.m. by Chair Sullivan at the Santa Ana Watershed Project Authority, 11615 Sterling Avenue, Riverside, California.

**1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

Roll call was duly noted and recorded by the Clerk of the Board.

**3. PUBLIC COMMENTS**

Mr. Kelly Rowe, Orange County Water District, noted the importance of California's water control facilities participating in the Army Corps of Engineers Rehabilitation Inspection Program (Program). Had the Oroville Dam spillway been included in that Program, then the multi-million-dollar repair costs would be paid by the Army Corps and not passed on to state water contractors. FEMA has denied DWR's submission for the Oroville Dam spillway repair costs; DWR has appealed. Rowe recommended state water contractors advance legislation supporting DWR's participation. Through the Program, the Army Corps essentially certifies a facility, completes annual inspections, and requires re-certification every five years. If a facility within the Program is damaged by a disaster, the Army Corps will pay for repairing the damage.

**4. CONSENT CALENDAR**

**A. APPROVAL OF MEETING MINUTES: AUGUST 20, 2019**

Recommendation: Approve as posted.

**MOVED**, approve the Consent Calendar.

Result:	<b>Adopted (Unanimously)</b>
Motion/Second:	Harrison/Bilodeau
Ayes:	Bilodeau, Harrison, Parker, Sullivan
Nays:	None
Abstentions:	None
Absent:	Dennstedt

At the request of Commissioner Harrison, consideration of Agenda Item No. 5.A. was delayed until the full Commission was in attendance. It was noted that Commissioner Dennstedt would arrive momentarily.

The Commission next considered Agenda Item No. 6.A.

**5. CLOSED SESSION**

Chair Sullivan recessed the meeting to Closed Session at 10:08 a.m. General Manager Rich Haller, Deputy General Manager Karen Williams, and Special Counsel James L. Payne were present during the discussion of Agenda Item No. 5.A.

**A. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2)**  
One Case

Chair Sullivan resumed Open Session at 10:37 a.m. There was no reportable action.

The Commission next considered Agenda Item No. 6.E.

**6. NEW BUSINESS**

**A. SAWPA BUILDING RENOVATIONS PROJECT UPDATE (CM#2019.93)**

Carlos Quintero provided a PowerPoint presentation regarding the SAWPA Building Renovations Project, copies of which were provided to the Commission, staff and the public. Chair Sullivan asked when parking lot renovations would be completed and what amount SAWPA would contribute; Mr. Quintero noted that under the MOU approved by the Commission June 4, 2019, WMWD is responsible for 68% of the cost and SAWPA 32%. WMWD will issue a request for bids; approval of the bid results will be brought before the Commission. Parking lot renovations should be completed by early 2020.

Commission Dennstedt arrived at 9:38 a.m. during the discussion of Agenda Item No. 6.A.

Rich Haller noted staff's appreciation for the building improvements and thanked Commissioner Dennstedt for her insight and direction during both the design and renovation phases of the process.

**MOVED**, approve an additional transfer of \$40,862.00 from Building Reserves.

Result:	<b>Adopted (Unanimously)</b>
Motion/Second:	Parker/Dennstedt
Ayes	Bilodeau, Dennstedt, Harrison, Parker, Sullivan
Nays:	None
Abstentions:	None
Absent:	None

**B. INLAND EMPIRE BRINE LINE DISCHARGER LEASE AGREEMENT (CM#2019.94)**

David Ruhl provided a PowerPoint presentation regarding the Inland Empire Brine Line Discharger Lease Agreement, copies of which were provided to the Commission, staff and the public. Staff's recommendation is subject to IEUA contributing an additional 400,000 gpd to the lease capacity pool; the IEUA Board will consider a resolution at its September 18, 2019 meeting. Chair Sullivan noted his support. Commissioner Harrison asked why the Chino Basin Desalter Authority (CDA) has a need for this capacity; Mr. Ruhl stated the CDA is addressing warranty issues with their pelletizer and accordingly have a need to discharge more brine during that process.

**MOVED**, approve and authorize the General Manager to execute a Discharger Lease Agreement with the Chino Basin Desalter Authority (CDA) to lease 0.4 million gallons per day (MGD) of brine line pipeline and treatment and disposal capacity right from the Lease Capacity Pool for a period of six (6) months with the possibility of extending the period for an additional six (6) months, subject to adequate commitment to the lease capacity pool.

Result: **Adopted (Unanimously)**  
Motion/Second: Parker/Dennstedt  
Ayes: Bilodeau, Dennstedt, Harrison, Parker, Sullivan  
Nays: None  
Abstentions: None  
Absent: None

**C. GRANT AGREEMENT AMENDMENT TO THE SARCCUP WATER USE EFFICIENCY (WUE) COMPONENT (CM#2019.95)**

Ian Achimore provided the PowerPoint presentation on the Grant Agreement Amendment to the SARCCUP Water Use Efficiency Component contained in the agenda packet on pages 25 – 31. SAWPA would require the services of two consultants – the first would field measure irrigable areas for dedicated irrigation meter customers, the second would manage data from retail water agency billing systems and digitize field measurements of the first consultant. Commissioner Bilodeau urged ending the use of Roundup as part of the *Arundo Donax* removal process within the watershed.

**MOVED**, approve transfer of approximately \$1.2 Million in SARCCUP funding from the SARCCUP Conservation-Based Rates program to fund a new program, SARCCUP Water Use Efficiency (WUE) Budget Assistance; and, authorize the SAWPA General Manager to execute associated amendments to the Department of Water Resources (DWR) SARCCUP Grant Agreement and agreements with the implementing agencies.

Result: **Adopted (Unanimously)**  
Motion/Second: Harrison/Dennstedt  
Ayes: Bilodeau, Dennstedt, Harrison, Parker, Sullivan  
Nays: None  
Abstentions: None  
Absent: None

**D. SAWPA PARTICIPATION AND ENGAGEMENT IN OUTSIDE ORGANIZATIONS (CM#2019.96)**

Agenda Item No. 6.D. was continued from the August 20, 2019 meeting. Rich Haller provided an update on the revised outside organization list provided in the agenda packet on pages 35 – 43 and SAWPA’s responses to the questions and comments raised by Commissioners. SAWPA has joined the California Special Districts Association (CSDA) and staff will attend the annual conference later in September.

Chair Sullivan encouraged continued engagement with the Public Policy Institute of California (PPIC), and supported individual participation in the American Water Resources Association (AWRA).

This item was for informational and discussion purposes; no action was taken on Agenda Item No. 6.D.

The Commission next considered Agenda Item No. 5.A.

**E. LEGAL SERVICES, RESULTS OF REQUEST FOR QUALIFICATIONS (RFQ) | AWARD OF CONTRACT (CM#2019.97)**

Rich Haller provided the PowerPoint presentation regarding legal services contained in the agenda packet on pages 58 – 63, reviewed the Legal Services RFQ process to date and historical information regarding legal services, and noted the following options:

Option 1	Consultant-provided legal services, inclusive of the role of SAWPA General Counsel (staff's recommendation)
Option 2	Consultant-provided legal services supplementing in-house General Counsel (current approach)

Chair Sullivan opened the floor for questions from the Commissioners.

Commissioner Dennstedt voiced concern regarding a possible conflict of interest; James D. Ciampa, Lagerlof, Senecal Gosney & Kruse LLP, has been engaged on behalf of Santa Rosa Regional Resources Authority (SRRRA), a JPA inclusive of WMWD, as well as directly on behalf of WMWD. Mr. Ciampa was present in the audience and noted the one issue he was involved with relating to WMWD was for a very limited Public Records Act dispute; at the request of general counsel, who had a conflict of interest, he stepped in and assisted with that one matter which was the extent of his representation.

Commissioner Dennstedt noted there were differences in the scope of work set forth in the RFQ and the proposed task order. Mr. Haller noted the task order referenced a work plan to be prepared by the consultant subsequent to a legal review after which a detailed scope of work would be prepared. The proposed task order would initiate that process but does not represent the full range of legal services that would be provided. Commissioner Dennstedt stated her review of past legal services hours and proposed legal services billable hours represented a significant increase in cost for legal services. Haller noted that during the historical periods reviewed for analysis when SAWPA utilized consultant legal services the hours worked per year were less than the hours allocated to legal services by in-house legal counsel, but the comparison is challenging because necessary legal services will vary from year-to-year; this consideration includes efficiency in delivery as well as quality of legal services. Commissioner Dennstedt voiced concern that the task order amount and scope of work were not matching up; the budgeted amount did not support the work set forth. Haller stated the task order was to initiate activities – assessment/status of legal documents, identify detailed work plan and scope of work to update those documents. Based on the work plan, staff would come back to the Commission for additional funding. Commissioner Dennstedt noted the scope of work included a task to update the employee handbook and stated she did not believe the number of hours needed to complete that task would be covered by the task order amount.

Commissioner Parker noted the difference in legal services required by SAWPA during a portion of the historical periods reviewed for analysis (2017 and 2018) which could have possibly skewed the numbers. Haller stated the scope of work varies from year-to-year and noted that the numbers were an average of the historical periods.

Commissioner Dennstedt again stated the scope of work in the RFQ and task order were not the same; cost savings should be reflected in what was presented for consideration and she did not see any cost savings benefit. Commissioner Parker agreed she did not see any cost savings benefit, which she believed to be the basis of the item.

Commissioner Bilodeau noted during his tenure at OCWD he has experienced both models – in-house counsel and consultant provided legal services. Having a firm in place has been much more productive

for staff due to the breadth of skills available; for a smaller agency, he voiced support having consultant provided legal services to perform work when and as needed on specific tasks.

Chair Sullivan noted that each SAWPA member agency has outside legal counsel for a reason – varied expertise that can be accessed at any time as needed. Other than increased hours due to litigation during 2016-2018, during his time on the Commission there were normal, day-in-day-out practices at SAWPA and this is reflective of potential cost savings by engaging consultant legal services. Chair Sullivan favored Option 1; the General Manager has determined engaging consultant legal counsel would lead to a cost savings when comparing \$75,000-\$125,000 to the current burdened rate for in-house counsel, and that is the recommendation to the Commission.

Commissioner Dennstedt made a motion to remain with current counsel, then clarified her motion was for Option 2. Commissioner Parker seconded the motion. Chair Sullivan called for a roll call vote. Commissioner Harrison asked for clarification if the motion included appointment of a firm to serve as outside counsel supplementing in-house counsel. Commissioner Dennstedt stated that engaging outside counsel should be at the discretion of the Commission at the time those services are needed, and that she was not in support of a \$75,000 task order for outside legal services. She was not opposed to retaining a firm for outside legal services for specific consultation but was not in support of spending \$75,000 to do that. Commissioner Dennstedt noted she was not present during the meeting when the firms presented to the Commission and accordingly deferred to the Commission for a specific firm recommendation. Commissioner Harrison supported the top-ranked firm, Lagerlof Senecal Gosney & Kruse LLP, and stated the retainer could be negotiated by the General Manager. Chair Sullivan asked Commissioner Harrison to re-state. Commissioner Harrison stated he would support Lagerlof Senecal Gosney & Kruse LLP as designated outside counsel; Commissioner Dennstedt noted to support in-house counsel. Chair Sullivan asked if it was for Option 2; Commissioner Harrison stated yes. Commissioner Parker supported that motion for Option 2 to stay with in-house counsel, keeping Lagerlof Senecal Gosney & Kruse LLP on retainer.

Commissioner Bilodeau advised the Chair he wanted to make a substitute motion, noting he could not support Option 2 because that would just be adding on to an existing cost structure for legal services which he did not think was financially prudent. Commissioner Bilodeau made a motion for Option 1 as recommended by staff, and to accept the recommendation of the number one ranked firm Lagerlof Senecal Gosney & Kruse LLP. Chair Sullivan seconded the motion.

Larry McKenney noted for the Commission's consideration that the average hours of legal services provided from 2003-2011 (before he was hired) was 589 hours; if you consider \$75,000 to cover providing those services the hourly rate would be \$127; none of the firms have proposed rates close to that amount. Even with the budget of \$125,000, the hourly rate would be \$212. The Commission memo notes the current cost for in-house legal services is \$150/hour.

McKenney also noted the following comparable information for consideration.

- Municipal Water District of Orange County (MWDOC); 30-member staff, an administrative agency with no facilities to operate and they budget \$200,000 for legal services with Best Best & Krieger.
- South Orange County Wastewater Authority; joint powers authority providing sewerage treatment services; 64 employees; averaged \$300,000 for legal services in their budget over the past five years, \$182,000 of which is allocated to their administrative function and not facilities related.

- SAWPA averaged budgeting \$175,000 for legal services annually over the preceding 10 years prior to hiring in-house legal counsel in 2011.
- Missing from the discussion for cost comparison is the fact that no one has asked him for input on ways that his current effective costs could be reduced. The model currently utilized to engage outside counsel when needed has worked well; mainly this has been for litigation services (he noted litigation services was not in the RFQ scope of work).
- Because his position is a hybrid, clearly he does work for the General Manager – he is an employee and his performance has been evaluated by the General Manager. He would like to continue being the Commission’s General Counsel; if cost is the concern, then changing his effective cost to the agency should be on the table for discussion which has not even been brought up for consideration.

Chair Sullivan noted there was a substitute motion before the Commission for consideration and called for a vote.

**MOVED**, approve staff’s recommendation to utilize consultant-provided legal services, inclusive of the role of SAWPA General Counsel as set forth in Option 1, authorize the General Manager to execute an Agreement for Services with Lagerlof Senecal Gosney & Kruse LLP and issue a Task Order for up to an amount not to exceed \$75,000.

Result:	<b>Failed (Roll Call Vote Taken)</b>
Motion/Second:	Bilodeau/Sullivan
Ayes	Bilodeau, Sullivan
Nays:	Dennstedt, Harrison, Parker
Abstentions:	None
Absent:	None

Chair Sullivan noted the Commission would next consider the original motion made by Commissioner Dennstedt, asking for clarification as to Option 2 and whether there would still be a Task Order for outside counsel not to exceed \$75,000. Commissioner Dennstedt stated her motion is to stay with current counsel and engage Lagerlof Senecal Gosney & Kruse LLP on retainer as special counsel; she was not in support of issuing a \$75,000 Task Order. Attorney Ciampa noted from the audience the firm would not charge a monthly retainer fee; they would provide on-call services. Commissioner Dennstedt agreed that would be her motion. Haller stated that, working with in-house counsel and special counsel, a work plan would be developed to identify specific work and required level of effort; we do need to update human resources documents, contract templates, etc. Commissioner Dennstedt thanked Haller, stating that is her motion. Chair Sullivan noted the original motion was to retain in-house legal counsel, but what if the General Manager states he doesn’t want in-house counsel two months down the line – the Commission doesn’t have a vote because he reports to the General Manager not to the Commission. Commissioner Dennstedt stated that should be added to a future agenda for discussion at a later time. Chair Sullivan called for a roll call vote.

**MOVED**, retain in-house General Counsel, approve Option 2 for consultant-provided legal services supplementing in-house General Counsel, authorize the General Manager to execute an Agreement for Services with Lagerlof Senecal Gosney & Kruse LLP, and direct the General Manager to develop a work plan to identify specific work and required level of effort.

Result:	<b>Passed (Roll Call Vote Taken)</b>
Motion/Second:	Dennstedt/Parker
Ayes	Dennstedt, Harrison, Parker
Nays:	Bilodeau, Sullivan
Abstentions:	None
Absent:	None

**7. INFORMATIONAL REPORTS**

The following oral/written reports/updates were received and filed.

Rich Haller stated the Regional Board asked SAWPA to provide input on the California Water Resilience Portfolio during the September 13 meeting in Anaheim. Larry McKenny provided a follow up report on SB1.

**A. CHAIR'S COMMENTS/REPORT**

There were no comments/reports from the Chair.

**B. COMMISSIONERS' COMMENTS**

There were no comments from the Commissioners.

**C. COMMISSIONERS' REQUEST FOR FUTURE AGENDA ITEMS**

Rich Haller confirmed the General Manager annual review would be placed on the next agenda.

**8. ADJOURNMENT**


There being no further business for review, Chair Sullivan adjourned the meeting at 11:21 a.m.

**Approved at a Regular Meeting of the Santa Ana Watershed Project Authority Commission on Tuesday, September 17, 2019.**



Ronald W. Sullivan, Chair

Attest:



Kelly Berry, CMC  
Clerk of the Board