

MINUTES OF THE BOARD OF DIRECTORS
ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

SPECIAL MEETING
June 30, 2010

President Quigley called the regular meeting to order at 4:45 p.m., with a salute to the flag. The following were present:

DIRECTORS: SANDS FIGUERS
JOHN GRECI
STEVE KALTHOFF
CHRISTOPHER MOORE
SARAH PALMER
DICK QUIGLEY
BILL STEVENS

DIRECTORS ABSENT: NONE

ZONE 7 STAFF: JILL DUERIG, GENERAL MANAGER
JUDY RECTOR, ACTING BOARD SECRETARY

Item 3 – Citizens Forum:

None.

Director Figures asked that a letter dated June 30, 2010, and addressed to him from the Fair Political Practices Commission be put in the record that he does not have a conflict of interest regarding participating in a governmental decision to hire an attorney for the district when he served as an expert witness for two firms that are being interviewed for the position. The FPPC's response is that because there is no reasonably foreseeable material financial effect on his economic interest, he does not have a conflict of interest. (Page one of the letter attached to minutes).

Item 4 – Selection of Firm to Provide Part-Time General Counsel legal Services

President Quigley explained the time frame at the beginning of each interview. Each interview will take 55 minutes: 10 minutes for the presentation; 30 minutes to answer the eight interview questions asked by the Directors, and 15 minutes wrap-up time.

- a) 5:00 p.m. Interview with Duane Morris, LLP
- b) 6:00 p.m. Interview with Downey Brand, Attorneys, LLP
- c) 7:00 p.m. Interview with Best, Best & Krieger
- d) 8:00 p.m. Interview with Morrison Law

Duane Morris: Tom Berliner and Colin Pearce

Question 1: Zone 7 manages regional flood protection, provides wholesale treated water to retail water suppliers, provides untreated State Project water to agricultural users and actively manages the local groundwater basin. In your experience providing General Counsel legal services to agencies such as Zone 7, what key tasks has your firm performed?

Answer: A tag-team approach with Tom Berliner as the lead would be used.

Question 2: Previous knowledge of Zone 7 can be helpful in minimizing the “learning curve.” On the other hand, having a fresh look at legal issues facing the agency may also be of value. Please describe how your firm balances these competing interests.

Answer: Tom Berliner is very familiar with State Water Contractor issues for over 20 years.

Question 3: Describe your style in providing constructive legal services to a public agency and give an example that best represents that style. For instance, when asked to review a project or program, how do you contribute in a way that assures compliance, minimizes risk and keeps the project or program moving forward in an efficient, timely manner?

Answer: Not a “list of problems” lawyer but rather a “let’s figure out how to do it” lawyer and “practical lawyering” is needed.

Question 4: From time to time, a client may determine that an individual attorney is no longer providing satisfactory service. On the other hand, an individual attorney may determine that s/he is retiring, otherwise leaving the firm or is no longer interested in providing legal services to a client. Describe how your firm might transition from one individual attorney to another in each of these cases (i.e., client request or firm request).

Answer: A tag team approach simplifies transitions, allowing them to be seamless.

Question 5: As stated in the proposal, “because of the need for a close working relationship between agency and General Counsel and to reduce costs for travel, counsel office proximity to the service area is a plus.” How does your firm propose to address this need?

Answer: Spend the day of the board meeting at Zone 7 which would minimize travel costs. They would not charge for their services if not needed.

Question 6: Zone 7 is a dependent special district but is currently gathering information in order to determine whether or not to separate from the County Flood Control District. Describe any experience or thoughts you might have on such a separation.

Answer: After looking over memos regarding separation, they feel politics and objectives will drive the separation, not legal issues. Colin added that Tom knows the people and the politics.

Question 7: Zone 7 has drawn on an Installment Sale Agreement it holds with Wells Fargo. Recently, Wells Fargo has expressed concerns with the use of reserve funding as part of Zone 7’s budget process. How would your firm assist in addressing this concern, if at all?

Answer: They related their past experience with defending Santa Clara Valley Water District’s use of reserves to ride out ERAF and they hired an expert in utility accounting.

Question 8: In selecting one of these law firms to be awarded the Legal Services contract, would you recommend that board deliberations should be held in closed or open session? Actual voting on the selection?

Answer: If it is a personnel issue, then closed session is okay. They felt there is something refreshing about keeping it all in the open.

Final words: They feel they know the rules and stated that they would really like to be Zone 7’s General Counsel.

Downey Brand: Ren Nosky

Question 1: Zone 7 manages regional flood protection, provides wholesale treated water to retail water suppliers, provides untreated State Project water to agricultural users and actively manages the local groundwater basin. In your experience providing General Counsel legal services to agencies such as Zone 7, what key tasks has your firm performed?

Answer: Downey Brand has 140 attorneys. Water and flood control law is what built the firm. They have been both the General Counsel and Special Counsel for many water agencies. They have an expertise in LAFCO plus labor and employment. Mr. Nosky was City Attorney for the City of Stockton where he controlled and managed the legal budget.

Question 2: Previous knowledge of Zone 7 can be helpful in minimizing the “learning curve.” On the other hand, having a fresh look at legal issues facing the agency may also be of value. Please describe how your firm balances these competing interests.

Answer: During the last several weeks, Mr. Nosky did “due diligence” on becoming familiar with Zone 7 and our issues, especially since they are not Tri-Valley residents. They felt they have more to learn.

Question 3: Describe your style in providing constructive legal services to a public agency and give an example that best represents that style. For instance, when asked to review a project or program, how do you contribute in a way that assures compliance, minimizes risk and keeps the project or program moving forward in an efficient, timely manner?

Answer: Mr. Nosky feels his style is that of a consensus builder and identifying who is the client is important.

Question 4: From time to time, a client may determine that an individual attorney is no longer providing satisfactory service. On the other hand, an individual attorney may determine that s/he is retiring, otherwise leaving the firm or is no longer interested in providing legal services to a client. Describe how your firm might transition from one individual attorney to another in each of these cases (i.e., client request or firm request).

Answer: Downey Brand would use a tag team approach with Mr. Nosky and David Aladjem.

Question 5: As stated in the proposal, “because of the need for a close working relationship between agency and General Counsel and to reduce costs for travel, counsel office proximity to the service area is a plus.” How does your firm propose to address this need?

Answer: There would be no travel charges. Since the Stockton office that Mr. Nosky works out of is close to Livermore, he would be able to offer regular office hours to Zone 7 as needed.

Question 6: Zone 7 is a dependent special district but is currently gathering information in order to determine whether or not to separate from the County Flood Control District. Describe any experience or thoughts you might have on such a separation.

Answer: In acknowledging the complications of separation, Mr. Nosky felt he would need to evaluate logistics and options and address employee issues.

Question 7: Zone 7 has drawn on an Installment Sale Agreement it holds with Wells Fargo. Recently, Wells Fargo has expressed concerns with the use of reserve funding as part of Zone 7’s budget process. How would your firm assist in addressing this concern, if at all?

Answer: Funding options and income streams would be explored.

Question 8: In selecting one of these law firms to be awarded the Legal Services contract, would you recommend that board deliberations should be held in closed or open session? Actual voting on the selection?

Answer: No basis to do it in closed session; open session is safer under the Brown Act.

Final words: Downey Brand is highly motivated and really wants to provide this service to Zone 7.

Best Best & Krieger: Roger Peters, Jill Willis and Stefanie Hedlund

Roger Peters gave a brief presentation on his firm. Jill Willis and Stefanie Hedlund are water law specialists but Best Best & Krieger is a full-service law firm from finance to labor to eminent domain. Although they have eight offices, all are electronically connected and the Walnut Creek office is only 20 minutes away. Mr. Peters did recommend regular office hours for Zone 7 and developing guidelines based on “core values” instead of rules-based.

Question 1: Zone 7 manages regional flood protection, provides wholesale treated water to retail water suppliers, provides untreated State Project water to agricultural users and actively manages the local groundwater basin. In your experience providing General Counsel legal services to agencies such as Zone 7, what key tasks has your firm performed?

Answer: Mr. Peters responded that Best Best & Krieger has performed a whole gamut of work from the Brown Act to contract work and benefits.

Question 2: Previous knowledge of Zone 7 can be helpful in minimizing the “learning curve.” On the other hand, having a fresh look at legal issues facing the agency may also be of value. Please describe how your firm balances these competing interests.

Answer: Jill Willis stated that it is important to be informed and that the key is communication with staff and legislative bodies. Roger Peters added that he is “big on full disclosure.”

Question 3: Describe your style in providing constructive legal services to a public agency and give an example that best represents that style. For instance, when asked to review a project or program, how do you contribute in a way that assures compliance, minimizes risk and keeps the project or program moving forward in an efficient, timely manner?

Answer: The full disclosure philosophy was again noted. Mr. Peters would encourage the Board to decide after describing the pros and cons and without making a recommendation. He would be a consensus builder.

Question 4: From time to time, a client may determine that an individual attorney is no longer providing satisfactory service. On the other hand, an individual attorney may determine that s/he is retiring, otherwise leaving the firm or is no longer interested in providing legal services to a client. Describe how your firm might transition from one individual attorney to another in each of these cases (i.e., client request or firm request).

Answer: Ms. Hedlund described Best Best & Krieger as a big firm and they would work together with Zone 7 to find the best fit. Mr. Peters added that their firm is project driven.

Question 5: As stated in the proposal, “because of the need for a close working relationship between agency and General Counsel and to reduce costs for travel, counsel office proximity to the service area is a plus.” How does your firm propose to address this need?

Answer: Mr. Peters replied “you call and I’m there” because the Walnut Creek office is only 20 minutes away. He also discussed Best Best & Krieger’s extranet portal which allows for document access.

Question 6: Zone 7 is a dependent special district but is currently gathering information in order to determine whether or not to separate from the County Flood Control District. Describe any experience or thoughts you might have on such a separation.

Answer: Mr. Peters feels that issue spotting is important and stated that a good lawyer is not the one that has all the answers but the one who has all the questions.

Question 7: Zone 7 has drawn on an Installment Sale Agreement it holds with Wells Fargo. Recently, Wells Fargo has expressed concerns with the use of reserve funding as part of Zone 7’s budget process. How would your firm assist in addressing this concern, if at all?

Answer: Mr. Peters stated that he would call in public finance specialists from Best Best & Krieger.

Question 8: In selecting one of these law firms to be awarded the Legal Services contract, would you recommend that board deliberations should be held in closed or open session? Actual voting on the selection?

Answer: Although Mr. Peters felt it was uncommon to make a selection in open session, he is okay with it and gave his pros and cons but stressed that the decision is up to the Board.

Final words: Best Best & Krieger is a firm of full team players. They deal with the issues in the organization and try to help achieve that organization’s goals. Jill Willis stated that is a challenging time in state water with water supplies at

risk and there is a need to be proactive and creative in finding solutions to the challenge.

Carl Morrison Law: Carl Morrison

Presentation: Attached copy of power point slides used as part of presentation.

Question 1: Zone 7 manages regional flood protection, provides wholesale treated water to retail water suppliers, provides untreated State Project water to agricultural users and actively manages the local groundwater basin. In your experience providing General Counsel legal services to agencies such as Zone 7, what key tasks has your firm performed?

Answer: Most of Mr. Morrison's experience in all of the above-noted areas has been while at Zone 7.

Question 2: Previous knowledge of Zone 7 can be helpful in minimizing the "learning curve." On the other hand, having a fresh look at legal issues facing the agency may also be of value. Please describe how your firm balances these competing interests.

Answer: Mr. Morrison described separating the General Counsel role from the consultant role and stated that knowledge is power.

Question 3: Describe your style in providing constructive legal services to a public agency and give an example that best represents that style. For instance, when asked to review a project or program, how do you contribute in a way that assures compliance, minimizes risk and keeps the project or program moving forward in an efficient, timely manner?

Answer: Mr. Morrison said that his style is to evaluate to avoid significant risks, make recommendations and know that the Board is the one who make the decision.

Question 4: From time to time, a client may determine that an individual attorney is no longer providing satisfactory service. On the other hand, an individual attorney may determine that s/he is retiring, otherwise leaving the firm or is no longer interested in providing legal services to a client. Describe how your firm might transition from one individual attorney to another in each of these cases (i.e., client request or firm request).

Answer: Although he has no intention of retiring, he does not have other associates in his firm to handle the transition.

Question 5: As stated in the proposal, "because of the need for a close working relationship between agency and General Counsel and to reduce costs for travel, counsel office proximity to the service area is a plus." How does your firm propose to address this need?

Answer: Mr. Morrison answered that his arrangements would be no different from what he has now which includes not charging Zone 7 for travel, phone calls or renting a place to stay in Pleasanton when he needs to be at Zone 7 because he lives in Southern California.

Question 6: Zone 7 is a dependent special district but is currently gathering information in order to determine whether or not to separate from the County Flood Control District. Describe any experience or thoughts you might have on such a separation.

Answer: Mr. Morrison discussed his LAFCO experience in Orange County and how he was involved in public relations in Victorville. He has also been involved in Management Advisory Team discussions and favors separation from the County.

Question 7: Zone 7 has drawn on an Installment Sale Agreement it holds with Wells Fargo. Recently, Wells Fargo has expressed concerns with the use of reserve funding as part of Zone 7's budget process. How would your firm assist in addressing this concern, if at all?

Answer: Mr. Morrison was surprised that Zone 7 borrowed instead of pay as you go. He would seek special counsel if legal advice was required and work at reducing costs so lenders are not working at risk.

Question 8: In selecting one of these law firms to be awarded the Legal Services contract, would you recommend that board deliberations should be held in closed or open session? Actual voting on the selection?

Answer: Politeness suggests using a closed session but he was not sure you can unless individual issues are discussed in closed session.

Final words: Mr. Morrison did state that being so close to Zone 7 may inhibit his ability to give a fresh look to issues however he would be the most cost effective.

After discussion, Director Figuers moved and Director Stevens seconded the motion to accept Downey Brand and adopt the Resolution. The vote was 7-0.

Resolution No: 10-4015 Authorizing the General Manager to negotiate and the Board President to execute a professional services contract with Downey Brand to provide as-needed part-time General Counsel legal support services for the period July 1, 2010 through June 30, 2010.

The Board went into closed session at 9:10 p.m.

Item 18 - CLOSED SESSION

- a) Conference with Legal Counsel – Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: 1 case

Item 19—OPEN SESSION AND REPORT OUT OF CLOSED SESSION

The Board came out of closed session at 9:30 p.m. There was nothing to report out.

The meeting was adjourned at 9:35 p.m.