

**MINUTES
LOCAL AGENCY FORMATION COMMISSION
MUNICIPAL SERVICE REVIEW WORKING GROUP
MONDAY, FEBRUARY 3, 2003**

Chairman Andy Vanderlaan (LAFCO Commissioner-Public) convened the Local Agency Formation Commission Municipal Service Review Working Group meeting at 10:00 a.m. Also present were: Working Group Members - Vice Chairman Harry Ehrlich (Special Districts Advisory Committee), Councilmember Patty Davis (LAFCO Commissioner-Cities), Supervisor Dianne Jacob (LAFCO Commissioner-County), Andy Menshek (LAFCO Commissioner-Special Districts), Jo MacKenzie (Special Districts Advisory Committee) (who entered at 10:35 a.m.), Paul Malone (Ad Hoc Cities Advisory Committee), and Penny Riley (Ad Hoc Cities Advisory Committee); LAFCO Staff - Michael Ott and Shirley Anderson.

Item 1

Approval of Minutes for December 2, 2002 Meeting

On motion of Andy Menshek, seconded by Councilmember Davis, and carried unanimously by the members present, the working group dispensed with reading the minutes of December 2, 2002, and approved said minutes.

Item 2

Executive Officer's Agenda Revisions

Michael Ott indicated there were no agenda revisions.

Item 3

Draft Analysis of Section A: Infrastructure and Services for the Municipal Service Review of Southern San Diego County Sewer and Water Agencies:

- (a) Attachment 1: Otay Water District's Response to Questions Posed by the City of Chula Vista;**
- (b) Otay Water District Independent Auditor's Report;**
- (c) 2001 San Diego county water Authority's Rate Survey;**
- (d) Helix Water District's Water Rate Correspondence; and**
- (e) Draft Data Summary (Revised 02/03/03)**

Mr. Ott said that the Draft Analysis of Section A deals with infrastructure and services only. He said the working group would continue to receive information from the agencies. He said staff would provide conclusions and determinations, which are required under State Law, for each category (infrastructure, administration, fiscal, and governance). Mr. Ott said that staff has provided the analysis of Section A, and is asking for comments and directions from the working group, so that they can be incorporated in the final analysis.

Mr. Ott introduced Shirley Anderson, who presented the staff report. Ms. Anderson said that after analysis for all five categories has been completed, staff will prepare the

conclusions and determinations, as required by the Municipal Service Reviews Guidelines. Ms. Anderson explained how staff completed analysis of Section A, and briefly discussed each of the five attachments to the Draft Analysis of Section A.

Councilmember Davis commented that she has concerns over Otay Water District's responses to Questions 1 and 2 in Attachment 1 regarding the rebates to ratepayers and the reduction of rate stabilization, and questioned why the Rate Stabilization balance is "0."

Paul Malone asked if Otay WD is self-insured due to their response to Question No. 4, specifically the Insurance Reserve entry of over \$4.5 million.

Geoff Stevens, representing the Otay Water District, indicated it is his understanding that Otay WD is self-insured.

Carrie Ludwig spoke as an individual to the working group regarding Agenda Items 4a and 4b, stating that she had been fired from the Otay WD after 7.5 years of service, and that she was a Records Management Specialist for the district. Ms. Ludwig said she felt that the major reason she was terminated was due to her participation in "association activities," and indicated that she was the former president of the employees' association at Otay WD. She questioned the legal expenses for the district for 2001 and 2002, a total of \$1,720,000. She said the law firm seems to bill Otay WD three or four months at a time, instead of presenting their billings on a regular and consistent basis. She noted that in Otay WD's response to grievances, they put "zero." She indicated that there were three grievances filed in October and two in November. She said she questioned the legal bills and indicated she feels the law firm has been involved in the grievances. Another category she questioned was "public relations," and said the district has spent large amounts of money on public relations. She said it has not been necessary in the past to spend this amount of money on public relations.

Ms. Ludwig commented on the district's response to Question 12, and said that in the chart on page 7, regarding "Chief of Administrative Services and Finance," Mateo Camarillo was brought aboard originally after the resignation of German Alvarez, and in March moved to "Acting General Manger." She said that Otay WD did not note this in their answer to Question 12. She said that shortly after he became the General Manager Mr. Alvarez became "disabled," and Bob Griego returned to the district as the "Acting General Manager."

Regarding Question 14, Ms. Ludwig stated that Otay WD reported they did not pay for legal services outside the contract. She said that Bob Griego indicated in a deposition that he did not know anything about legal services billings outside the contract, but the legal services billings were attachments to the deposition.

Regarding litigation on page 31 of the Audit, Ms. Ludwig said it was discussed whether or not there was adequate insurance to cover the costs of the lawsuits occurring at the district, and said that if the district could have resolved the complaint by the Public Employment Relations Board (PERB) instead of prolonging the matter for some months

before they reinstated the employees because the matter was to go to trial, the district would not have had such large attorney fees.

Ms. Ludwig said that in May of last year the district's errors and omissions insurance and employee practices insurance was not renewed by the carrier. She said the district found another insurance carrier at a higher cost to the ratepayers – an additional \$30,000. She said that the minutes of the meeting indicates if the district could "keep clean for six months the insurance carrier would reinstate coverage for the district." She said she is not sure if they are currently insured by the original carrier, because many of the documents she maintained did not return to her area after they were removed, including the Form 700s, Conflicts of Interests Statements, which she had maintained for the prior 6.5 years. Ms. Ludwig said with the continuing employee problems and losses, she feels the district and ratepayers especially will suffer extremely high insurance premiums, and said she wanted the working group to have the information she presented.

Ms. Ludwig said that German Alvarez and Mr. Griego started a business, and that a fictitious business name was filed on 5/4/01, and this was discussed by Otay WD's board. She said she has not been able to locate the particular information, but will provide it to the working group at a future date. She said that because German Alvarez stayed on the payroll after he resigned, he was not required to complete a "Conflict of Interest" statement. She said she would also provide this information to the working group.

Supervisor Jacob said that the information presented by Otay WD indicates there were no grievances for fiscal year 2002-03, and that Ms. Ludwig indicated there were a total of 5 grievances for October and November, 2002. Supervisor Jacob said that of a total of 166 employees over the last 4 years, about 68 have turned over for one reason or another. Supervisor Jacob asked Ms. Ludwig if there was pending litigation resulting from employee turnovers or terminations.

Ms. Ludwig said she believes the district has been served on a pending federal suit by the six employees that won their PERB case, and there is a pending unfair practice charge, and there may possibly be another federal case filed.

Supervisor Jacob asked if these were in addition the five grievances that Ms. Ludwig mentioned. Ms. Ludwig said, "Yes." She indicated currently there are 12 pending actions by employees, and possibly one more.

Supervisor Jacob said she is concerned about the accuracy of the data submitted by the district.

Shirley Anderson said Otay WD's information is dated 10/24/02, and presumably was prepared several weeks prior to the 24th of October, so it is possible the grievances had not been filed at the time the information was prepared. She indicated this information would be clarified with Otay WD.

In response to a question of Councilmember Davis, Ms. Ludwig said the self-insurance is in respect to employee benefits, health insurance, etc., and that she does not think it has anything to do with risk management.

Vice Chairman Harry Ehrlich said that page 32 of the Audit describes the insurance, which relates to Paul Malone's previous question on the insurance reserve. Mr. Ehrlich said that more information from the district in this area would be helpful for the working group.

Chairman Vanderlaan requested a representative from Otay WD come to the podium to answer specific questions from the working group.

Bob Griego, General Manager of Otay WD, said the district is self-insured for medical benefits and has an insurance carrier for liability, which is adequate to cover the expenses of litigation. He said that currently there are three lawsuits resulting from governance issues. He said the lawsuits are covered by the carrier and will not require expenditures of the district's general fund or ratepayer funds. As far as grievances are concerned, Mr. Griego said there were some grievances filed in the last few months, due to employee terminations or discipline issues, but they do not involve attorneys and are proceeding through the internal process. He said he expects most of the grievances to be resolved in the next few months. Mr. Griego said in there was a two- or three-month period, when Otay WD board members were involved in activities that were for their own interests, and Otay WD is in the process of resolving those issues. He said that the business mentioned by Ms. Ludwig no longer exists, and said that he was not a principal, but was a passive investor. He said the business was started during the time he was not employed by Otay WD. He said that Otay WD would be glad to respond to the concerns that have been brought forward. He said the Otay WD continues to focus on improvements and their priority is providing an adequate water supply for south San Diego County.

Supervisor Jacob asked Mr. Griego to comment on Otay WD's northern water system's inability to meet the 10-day water service demand. Mr. Griego said the district has started design and construction of the Grande Vista reservoir, which will provide a 14-day water supply storage in the future.

Supervisor Jacob asked staff to look into the discrepancies between the information received by the working group and the information from the water district.

In response to a question from Supervisor Jacob, Mr. Ott said that staff has not received comments from other agencies on the data, but hopes comments will be forthcoming. Mr. Ott said agencies should review the data and provide their comments on the information that has been presented.

Supervisor Jacob commented that it is absolutely necessary to have good data in order to begin the analysis process. She said there was a lot of information presented by the speaker, and wondered how many others have information to provide that may be contradictory to the information provided by the Otay WD. She said she wants to make sure the officials at Otay WD have the ability to provide input that might clarify the information as presented. She said she wants to be sure that ultimately the information

provided is the truth. She said the only way to do this is to take additional time to analyze the information presented by the speaker, and that she would like to see the comments from Otay WD officials, and said she would welcome comments from other employees of the district that may have pertinent information. She said it is important to get factual data in order for this service review to be a document that has high credibility.

Andy Menshek said it is the working group's responsibility to provide a completed document of the utmost accuracy. He said he is also concerned that the working group is not receiving accurate information from the affected agencies, and suggested the following questions be asked of all districts under the municipal service review purview: request information on all pending litigation from the districts, and the inception date of that litigation; request an updated number of grievances and the dates these grievances were filed; request updated legal invoices and actual billings and billing frequency, if the provider is contractual or in-house, and who does the billing; and request form 700s on all individuals that are required to file from all districts, and to make these conflict of interest documents, which are public documents, part of the package. He said because of the infrequent meetings of the working group, plenty of activity can occur between meetings, so he also requested that in order to have accurate documents for the working group to make accurate conclusions, should any changes to these items occur between meetings, the working group be notified. He said that by refining these questions. and asking for dates and times, discrepancies can be eliminated.

On motion of Andy Menshek, seconded by Jo MacKenzie, and carried unanimously by the members present, the working group took the following actions:

- (1) Directed staff to request information from districts involved in the service review regarding all litigation and the inception date of that litigation;
- (2) Directed staff to request from districts involved in the service review an update on the number of grievances and the dates these grievances were filed;
- (3) Directed staff to request from districts involved in the service review updated legal invoices, actual billings and billing frequency information regarding the provider, whether contractual or in-house, and who prepared the billings;
- (4) Directed staff to request from districts involved in the service review copies of Form 700s (Conflict of interests Statements) for all individuals required to file; and
- (5) Directed staff to request from districts involved in the service review updates to the above information so that the working group consistently has accurate information.

Harry Ehrlich asked that staff review the insurance issue as it relates to potential liability and cost impacts to agencies, not just to Otay, and whether or not it is substantially different from current information. He said that at some point the working group will have to look at "norms" or "ranges" in order to make an assessment on the information.

In response to a question from Paul Malone, Mr. Ehrlich clarified that staff will be asking for non-medical claims history, which would include payouts from the district versus whether or not the premiums increased significantly.

Andy Menshek said, if the information is available, the scope of review should also include whether each district had "ENO" and whether there were claims paid against "ENO."

Supervisors Jacob indicated she would like to see a comparison of the districts' public relations expenditures, and the issue of the competitive bidding process when the districts hire consultants, public relations people, and attorneys.

Mr. Ott explained to the working group that when staff analyzes the next section of the data summary, which is administration, operations, and management, competitive bidding information will be included. He said some data is available, but has not been presented to the working group in an analysis format.

On motion of Supervisor Jacob, seconded by Harry Ehrlich, and carried unanimously by the members present, the working group took the following actions:

- (1) Directed staff to review the districts' insurance issues as it relates to potential liability and cost impacts on agencies; and
- (2) Directed staff to compare the districts' public relations expenditures and competitive bidding processes used when districts hire consultants, public relations firms, and attorneys.

Harry Ehrlich said, in response to a statement made by Mr. Griego, that in the last six to twelve months he has only had a discussion with the CWA representative, Mr. Croucher, about CWA business.

Chairman Vanderlaan asked the working group how many members have been directly contacted by members of the Otay Water District board members.

Jo MacKenzie said she has not been contacted by anyone from Otay WD.

Andy Menshek said that he works with Director Croucher, but their discussions center on CWA water matters, and fire department business. He said he has never had a conversation with board members that have been removed.

Councilmember Davis has had discussions with members of Otay WD, both current members and those members who have been removed.

Mr. Malone indicated that emergency planning information indicates a demand of approximately 109 mgd for 10-days, and Otay WD's central system has less than 70 mgd storage capacity, according to the second to the last paragraph on page 12 of the draft analysis. Shirley Anderson explained to the working group that the math is correct regarding page 12 of the draft analysis.

Chairman Vanderlaan thanked Carrie Ludwig for addressing the working group. Chairman Vanderlaan also thanked Mr. Griego for his comments to the working group.

Mr. Ott asked for clarification from the working group whether staff should obtain Otay WD's response to Ms. Ludwig comments. He said he feels it would be useful to forward a copy of the working group's minutes to Otay WD and for Otay WD to respond to the comments and concerns of the working group, which will be considered by the working group at a future meeting.

Supervisor Jacob indicated that it is important to get as much information possible to complete an accurate analysis, therefore, on motion of Supervisor Jacob, seconded by Councilmember Davis, and carried unanimously by the members present, the working group took the following actions:

- (1) Directed staff to make the minutes of the meeting available to the Otay WD officials and employees; and
- (2) Directed staff to solicit comments from individuals and employees of the district regarding additional information that may be helpful in the analysis process.

Chairman Vanderlaan said that Carrie Ludwig should also receive a copy of the minutes.

On motion of Councilmember Davis, seconded by Jo MacKenzie, and carried unanimously by the members present, the working group took the following action:

Accepted Attachments 4c (San Diego County Water Authority's Rate Survey), 4d (Helix Water District's Water Rate Correspondence), and 4e (Draft Data Summary (Revised 2/3/03), as presented.

**Item 5
Public Comment**

No members of the public requested to speak.

There being no further business to come before the working group, the meeting adjourned at 11:05 a.m., to a tentative meeting date of Monday, April 7, directly following the Local Agency Formation Commission meeting, Rooms 302-303, County Administration Center.

**Jan Bryson
Executive Assistant**