

**MINUTES OF THE SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
SIERRA LAKES COUNTY WATER DISTRICT**

Date: Saturday May 25, 2019 / **Time:** 10:00 a.m. / **Place:** 7305 Short Road, Serene Lakes, CA

I. Open Meeting:

Roll Call: Directors in attendance at the Sierra Lakes Boardroom were:

Director Michael Lindquist
Director Dan Stockton
Director Bob McCormick
Director Richard Simpson

The meeting was teleconferenced pursuant to Government Code Section 54953 to allow attendance by Director Karen Heald from 1520 E Covell Blvd 5B #262, Davis, CA.

Staff members present: Bill Quesnel, General Manager

Staff present by phone: Jeffrey Mitchell District Counsel

Guests present: Paul Schultz

Minute Recorder: Bill Quesnel, General Manager (GM)

Public Forum: An opportunity for members of the public to address the Board on items that were not on the agenda. There was no one in the audience; no comments.

II. Approve Agenda: The agenda was presented to the Board for approval.

A motion was made by Director Stockton and seconded by Director Simpson to approve the agenda. The motion passed by a roll call vote. Ayes: Directors Lindquist, Stockton, McCormick, Simpson and Heald. Noes: none. Abstentions: none. Absent: none.

III. Public Comments: An opportunity for the Board to consider comments received from the public after the agenda was posted, regarding items on the agenda. There were no comments received after the agenda was posted.

IV. Old Business

A memorandum titled "General Manager Recruitment/ Agreement", dated May 23, 2019, was presented to the Board by Mr. Quesnel, GM. Also presented was a Final Draft General Manager (GM) Contract with Paul Schultz, dated 5/22/19, and a Redline of May 10th Contract with Paul Schultz, dated May 14, 2019.

Mr. Quesnel said his memorandum was based on information received from Mr. Mitchell, District Counsel. He said there was also a May 24, 2019, version of the proposed GM Contract/Agreement sent to the Board the afternoon of May 24, 2019.

Director Simpson started the discussion with the \$265,000 limit that was placed on the GM's compensation. He said his calculation of 30 hours/week, 52 weeks/year at \$162.50 plus 10% exceeded the \$265,000 limit. Director Lindquist said he recollected the discussion was that there was a reasonable estimate of what the reimbursable expenses would be. Mr. Quesnel said his recollection was that the math was around \$250,000 and that there was discussion about how much additional, out of pocket, expenses the GM might incur. He also said the 10% would not be added to the hourly rate; the 10% would only be added to reimbursable, out of pocket, expenses such as printing of plans, documents or possibly a lunch. Mr. Mitchell noted the contract had a "not to exceed" (NTE) 1,560 hours/year. Director Simpson said he was agreeable to this interpretation. Director Lindquist summarized that the total compensation was based on:

Total Hours (1,560 x \$162.50)	\$253,500
Reimbursable Expenses NTE	<u>11,500</u>
Total Compensation Limit:	\$265,000

Director Heald asked if the Board was going to go through the entire contract or if the discussion was going to be primarily about insurance and indemnification. Director Lindquist said, given that the Board was being asked to approve a contract, he would not want to stifle any questions regarding the document. Director Heald said she had two questions relating to the document that did not relate to indemnity but that she also had some issues regarding the indemnity.

Director Heald's first comment was in regard to Section 1.0 Basic Services. She said under "Oversight" there was a reference to "Supervision of three full-time and one seasonal Utility System Operators". She said in the past, based on the number and size of projects, the District had tried to hire additional seasonal help and thought the statement was limiting. The consensus was to remove the number of employees and say "Supervision of full-time and seasonal Utility System Operators".

Director Heald's second comment was in regard to the "Coordination with Financial Consultant who performs administrative office functions". She said currently, Bill Quesnel actually supervises Anna Nickerson. This was reflected in the fact that Bill evaluates Anna and that he oversees her work on a day to day basis. She said the contract reflected a change to the current situation but that she was fine with it because Anna was very self-motivated and autonomous. She said she wanted to make sure that that was what the Board intended and that it would also change who would do Anna's evaluation. Director Lindquist said he didn't think the verbiage precluded the Board from requesting that the GM perform the evaluation. Director Simpson said supervision boils down to evaluation and it was said that the GM would supervise. Mr. Mitchell proposed changing the contract to read "Coordination with and evaluation of the Financial Consultant..." Director Simpson said he would rather see "supervision of". Mr. Quesnel said he chose "coordination" because he was not comfortable with "supervising". He said he wasn't confident supervising Anna's direct work due to his lack a financial background; he left that up to the auditors. He said seeing what she does day to day and having her help with specific tasks was what he was trying to describe by using the word "coordination". He also said "supervision" really wasn't the word that described the relationship between the GM and the Financial Consultant. Director Heald suggested that the Board leave "coordination" but remove the supervision from the

GM placing the supervision/evaluation with the Board President. Director Lindquist summarized that the Board would leave “coordination” with the understanding that the Board could request the GM to do certain things and that who performs the Financial Consultant’s evaluation would be decided at a later date.

Director Heald’s third comment was in regard to Section 4.2 Ownership of Documents. She said in the last part of the paragraph where it said “Reuse of any work products of Consultant by District for other than the specific project covered in this Agreement without the written permission of Consultant shall be at District’s risk; ...”. Her question was, if the GM performed something for the District that created a work product, which was the outcome of that project, and the District had an ability to use the product in another facet of District operations, would the District be precluded from using the product? Mr. Mitchell said, although it was pretty standard language, the Board should keep in mind that it would all be covered under the specific project of the agreement and that in this particular case, the specific project was GM. Therefore, the District would be able to use the product in other facets of District operations.

The Board then discussed Sections 4.5.1 and 4.5.2. Director Heald started by saying, Section 4.5.1 stated that the GM would indemnify for liability arising out of negligence including negligence failure and willful misconduct. However, the indemnity was limited by Section 4.5.2.1, that limited coverage to the limit of the liability insurance, and by Section 4.5.2.2, to no limit for claims arising from willful misconduct. She said one would think that negligence would be covered by liability insurance but that sometimes negligence and willful misconduct met in a gray area. Her example was, the insurance company denies a claim and cites willful misconduct and then Mr. Schultz claims that there was no willful misconduct, in which the District might agree, but the exception to the limitation of indemnity in 4.5.2 would not apply, so who would cover the claim? Director McCormick said the claim would have to be litigated. Director Heald said the District would be left at the mercy of Mr. Shultz’s insurance, notwithstanding the indemnity language in Section 4.5.1. Her conclusion was that the language had the same holding coverage that Mr. Mitchell identified at the previous meeting.

Mr. Mitchell said, describing the four policies, commercial general liability, auto, professional liability and worker’s compensation, was an attempt to capture all the scenarios the District would likely encounter. However, if a claim was denied because it didn’t fall under one of those policies, the answer could be litigation with the insurance company. He agreed that it was not a desirable outcome but that the only other way he knew to prevent the need for litigation would be to impose the liability onto Mr. Schultz personally, if the Board felt it was fair to place liability onto an individual. He also said, it would be unlikely that Mr. Schultz would have the assets to support a \$5,000,000 claim. Director Heald said she didn’t know what she was really looking for other than she didn’t want the District to be responsible to have to pursue coverage from Mr. Shultz’s insurance company. She said she was fine with limiting the liability to the limits of the insurance policy but had a concern about what she perceived as a hole in coverage; the District would either not get indemnified or would only get indemnified if the District went after the insurance company.

Mr. Mitchell said he had not been able to speak to JPIA, the District’s insurance company. He said he wanted to talk to them about the District existing policy and if there was a way to ensure that the District’s insurance would kick in as a backup in the event that a claim was denied by Mr. Schultz’s insurance. There would be a review of JPIA’s interpretation of Independent Contractor coverage “gap” and what the difference would be if Mr. Schultz was an employee. He said even with employees there could be claims that would not be covered by insurance. Mr. Mitchell said

the optimal test was “do we have all the insurance coverage which is reasonable to obtain.” And, in those cases where there was no insurance coverage, how much liability would the Board expect Mr. Schultz to be personally liable for.

Mr. Mitchell said, in a situation where the Board felt a claim was improperly denied, the Board could either tender the claim to JPIA, and hope for a different outcome, or litigate against Mr. Schultz’s insurance company.

Director McCormick said he didn’t want the Board to enter into contracts that were considered so unusual that the Board would be questioned about the reasonableness for protecting the agency. Mr. Mitchell said he had worked with other agencies that entered into contracts with independent contractors and that if it were a large contractor he would not recommend the limitation on liability. However, given the situation, he was ok with the contract as written.

Director Lindquist said there was a potential where something could occur that would not be covered by insurance and that the only remedy would be to go back to unlimited liability for everything. He said, if that was what that the Board decided, that would be fine. However, they would have to recruit a new candidate. He agreed that by limiting the liability, the Board was taking a risk. There was no way to tighten it up to no risk without going to unlimited liability. The question was whether or not the Board would be willing to take the risk for the District.

Director McCormick wanted to confirm that the \$250,000 only applied to Mr. Schultz’s liability if the policy lapsed, it didn’t limit his responsibility to indemnify to \$250,000. Director Heald said Mr. Schultz wanted no liability unless the claim was denied because the premium wasn’t paid.

Mr. Mitchell summarized what he understood the Board’s intent to be:

1. There was a general consensus on the Board’s part that if a claim was covered by insurance, it would be ok to limit the liability to the amount of coverage.
2. If it was a claim covered by Worker’s Compensation, the liability would not be limited.
3. If the claim arose from willful misconduct, no limits would be placed on liability.

Mr. Mitchell said all that was left was a narrow universe of claims not covered by insurance. He said that also included claims that the District felt should be covered and were willing to pursue. He said those claims would fall into the following categories:

1. Claims not covered due to policy lapse
2. Claims that could not be articulated today but would not be covered
3. Claims that the insurance company deemed willful misconduct but which both Mr. Schultz and the District disagreed.

Mr. Mitchell asked:

1. Was the Board comfortable with accepting a \$250,000 limit on liability should a claim be denied due to the lapse in coverage –
2. Was the Board comfortable with Mr. Schultz having a \$250,000 limit on liability for claims not covered by insurance (Mr. Schultz wanted no liability for claims not covered by insurance) –

Director Heald said her concern was the Board's duty to its constituents to negotiate a contract that would protect the District in a scenario where that, even the attorney had admitted, included an unusual limitation on liability to the company or person. Her other concern was that if the Board didn't agree with the terms that they would have to look for another GM. Director McCormick agreed with her concerns. He said he saw it as a balancing act — was the scope of the required insurance coverage Mr. Schultz was to carry along with the District's scope of insurance coverage enough to protect the District? Finally, did the \$250,000 limit on Mr. Shultz's exposure make sense and was it justifiable in a case of willful misconduct. He said it would make him feel better if the Board didn't limit liability for gross negligence, willful misconduct and violations of law.

Mr. Mitchell proposed that he discuss the matter with JPIA and check with Mr. Schultz about adding gross negligence to the section regarding willful misconduct and that the limitation would not apply to either if they were not covered by insurance.

The Board invited Paul Schultz into the boardroom to discuss his position regarding the insurance requirements. Mr. Schultz had recused himself to Mr. Quesnel's office so had not been privy to the discussions to this point. Director Lindquist said the Board wanted to hear from Mr. Schultz what his goals were in regard to limits of liability and indemnification to determine if the two positions aligned. Mr. Schultz said his goal was to be able to make himself whole in the remote case of a catastrophic event. He said he either wanted to be covered by insurance or have a limitation in situations not covered by insurance. Mr. Schultz also said he would accept an unlimited liability due to a lapse of insurance because he had no intention of letting his insurance lapse. He added that it was his practice to pay his premiums a year in advance. However, if the Board would be more comfortable with making the insurance payments and being reimbursed, he was fine with that too.

Director Lindquist said the other gap the Board discussed was the limit for something not covered by insurance. He said for items covered by insurance, the liability would be limited to the amount of the insurance coverage; the issue was items not covered by insurance. When asked, Mr. Mitchell said he couldn't think of a situation that would not be covered by insurance making the gap in coverage very narrow. Mr. Mitchell also suggested that a discussion with the District's insurance company might provide the Board with a higher level of comfort. He said he would request that JPIA review the District's insurance requirements to determine if the levels were adequate or if they would recommend something different.

Director McCormick said there were generally things not covered by insurance, such as willful misconduct and possibly gross negligence. He said in the case of a public agency, the Board needed to be careful not to look like they would excuse certain types of behavior. Mr. Schultz said it was his experience that willful misconduct was really hard to prove and that the contract shouldn't be customized to him; it needed to be translatable to any GM. He also said gross negligence could be added to the willful misconduct section of the contract.

Mr. Mitchell said the remaining issue was having a discussion with JPIA concerning the specific insurance the Board was requiring Mr. Schultz to carry and to determine that the language included in the contract provided the highest level of comfort. Director Heald said claims not covered by insurance, in which no example could be provided, was only one piece of the puzzle. The other piece was whether or not JPIA could provide an endorsement for those claims that Mr. Shultz's insurance refused to cover, even though the Board felt they should be covered. She said it

was important to protect the Board's decision making and fiduciary duties. Mr. Mitchell's two discussions with JPIA would be:

1. To have them review the Board's required policies, wording, and endorsements and determine if anything needed to be added and
2. How the District's policy addressed consultants, specifically a consultant retained to be GM, and if there was a gap in insurance coverage or an exclusion. Was that something that could be addressed with a change in the current policy

The Board anticipated that they would vote on the contract at the June meeting after Mr. Mitchell's discussion with JPIA.

V. Adjournment

A motion was made by Director Stockton and seconded by Director Simpson to adjourn the meeting. The motion passed by a roll call vote. Ayes: Directors Lindquist, Stockton, Simpson, McCormick and Director Heald. Noes: none. Abstentions: none. Absent: none.

The minutes were approved at the Regular Meeting held on June 14, 2019, as part of the Consent Items Calendar. A motion was made by Director Heald and seconded by Director Simpson to approve the Consent Items Calendar. The motion passed by a unanimous vote: