



*Dedicated to
Satisfying our Community's
Water Needs*

**AGENDA
MESA WATER DISTRICT
BOARD OF DIRECTORS
Tuesday, July 6, 2021
1965 Placentia Avenue, Costa Mesa, CA 92627
9:00 a.m. Adjourned Regular Board Meeting**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

Items Not on the Agenda: Members of the public are invited to address the Board regarding items which are not on the agenda. Each speaker is limited to three minutes. The Board will set aside 30 minutes for public comments.

Items on the Agenda: Members of the public may comment on agenda items before action is taken or after the Board has discussed the item. Each speaker is limited to three minutes. The Board will set aside 60 minutes for public comments.

ITEMS TO BE ADDED, REMOVED, OR REORDERED ON THE AGENDA

At the discretion of the Board, all items appearing on this agenda, whether or not expressly listed as an Action Item, may be deliberated and may be subject to action by the Board.

ACTION ITEMS:

1. **GENERAL LEGAL COUNSEL SERVICES:**

Recommendation: Interview firms to provide General Legal Counsel Services and make final selection.

REPORTS:

2. **REPORT OF THE GENERAL MANAGER**

3. **DIRECTORS' REPORTS AND COMMENTS**

INFORMATION ITEMS:

4. **OTHER (NO ENCLOSURE)**



In compliance with California law and the Americans with Disabilities Act, if you need disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, or if you need the agenda provided in an alternative format, please contact the District Secretary at (949) 631-1206. Notification 48 hours prior to the meeting will enable Mesa Water District (Mesa Water) to make reasonable arrangements to accommodate your requests.

Members of the public desiring to make verbal comments utilizing a translator to present their comments into English shall be provided reasonable time accommodations that are consistent with California law.

Agenda materials that are public records, which have been distributed to a majority of the Mesa Water Board of Directors (Board), will be available for public inspection at the District Boardroom, 1965 Placentia Avenue, Costa Mesa, CA and on Mesa Water's website at www.MesaWater.org. If materials are distributed to the Board less than 72 hours prior or during the meeting, the materials will be available at the time of the meeting.

**ADJOURN TO A REGULAR BOARD MEETING SCHEDULED FOR THURSDAY, JULY 8, 2021
AT 6:00 P.M.**



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MEMORANDUM

TO: Board of Directors
FROM: Paul E. Shoenberger, P.E., General Manager
DATE: July 6, 2021
SUBJECT: General Legal Counsel Services

RECOMMENDATION

Interview firms to provide General Legal Counsel Services and make final selection.

STRATEGIC PLAN

- Goal #1: Provide a safe, abundant, and reliable water supply.
- Goal #2: Practice perpetual infrastructure renewal and improvement.
- Goal #3: Be financially responsible and transparent.
- Goal #4: Increase public awareness about Mesa Water and about water.
- Goal #5: Attract and retain skilled employees.
- Goal #6: Provide outstanding customer service.
- Goal #7: Actively participate in regional and statewide water issues.

PRIOR BOARD ACTION/DISCUSSION

At its June 8, 2017 meeting, the Board of Directors (Board) adopted Resolution No. 1501 – Establishing a Policy for the Selection Process for the Appointment of General Legal Counsel and Independent Auditor.

At its February 11, 2021 meeting, the Board received information that staff was preparing a Request for Proposals for General Legal Counsel Services.

At its April 27, 2021 Committee meeting, the Board directed staff to move forward with conducting in-person interviews for General Legal Counsel Services.

At its May 25, 2021 Committee meeting, the Board directed staff to schedule interviews with the three highest ranked firms (listed here in alphabetical order): Atkinson, Andelson, Loya, Ruud & Romo; Burke, Williams & Sorensen, LLP; and Rutan & Tucker, LLP.

DISCUSSION

Mesa Water District (Mesa Water®) is seeking qualified law firms to serve as contracted General Legal Counsel (Counsel). Counsel's primary role is to provide expert legal advice to the Board and General Manager. Attendance at a variety of meetings will be required, including Board meetings, workshops, etc., as specified.

Mesa Water sent the Request for Proposal (RFP) to seven firms requesting them to submit proposals to serve as the District's Counsel.

The following five firms submitted proposals:

- Atkinson, Andelson, Loya, Ruud & Romo
- Burke, Williams & Sorensen, LLP



- JC Law Firm and Meyers Nave
- Kidman Gagen Law, LLP
- Rutan & Tucker, LLP

The Board agreed upon the process as follows:

- Upon receipt of proposals, staff will review and provide the Board with its rankings;
- The Board will provide direction to staff on which firms will be interviewed; and
- The Board will conduct interviews and make a final selection.

Each of the firms provided a qualified proposal based on the scope of work requirements. Staff ranked, in order, Burke, Williams & Sorensen, LLP; Rutan & Tucker, LLP; Atkinson, Andelson, Loya, Ruud & Romo; JC Law Firm and Meyers Nave; and Kidman Gagen Law, LLP as the highest based on their qualifications and experience. The Board directed staff to schedule interviews with the three highest ranked firms. The evaluation of the cost proposals will take place at the meeting at which staff will also provide the necessary interview materials.

The selected law firm will be expected to provide a broad range of general legal services, including but not limited to Brown Act compliance, ethics, environmental law, eminent domain, contract law, public works contracts, bidding and construction law, special district operations, legislative and regulatory advocacy, recycled and desalinated water regulation and permitting, operations and procedure of Local Agency Formation Commission (LAFCO), regulation of groundwater (and associated pumping charges), and general litigation. An operational knowledge of the roles and functions of the Association of California Water Agencies (ACWA), California Department of Water Resources (DWR), State Water Project (SWP), Metropolitan Water District of Southern California (MWD), Municipal Water District of Orange County (MWDOC), Orange County Water District (OCWD), State Water Resources Control Board (SWRCB), Santa Ana Regional Water Quality Control Board (RWQCB) and the SWRCB Drinking Water Division is essential to successfully performing the role of District Counsel.

In addition, the successful firm shall possess sufficient resources to ensure that the demands of the District's legal needs will be met on a timely basis. This relationship will be on a consulting or contractual basis, as opposed to a staff position.

FINANCIAL IMPACT

In Fiscal Year 2022, \$400,000 is budgeted for Legal Services; no funds have been spent to date.

ATTACHMENTS

Attachment A: Resolution No. 1501

RESOLUTION NO. 1501

RESOLUTION OF THE MESA WATER DISTRICT BOARD OF DIRECTORS ESTABLISHING A POLICY FOR THE SELECTION PROCESS FOR THE APPOINTMENT OF GENERAL LEGAL COUNSEL AND INDEPENDENT AUDITOR, SUPERSEDING RESOLUTION NO. 1307

WHEREAS, Mesa Water District (Mesa Water) is a county water district organized and operating pursuant to the provisions of California law; and

WHEREAS, Section 30544 of the California Water Code authorizes the Mesa Water Board of Directors (Board) to appoint or employ and prescribe the authorities and duties of certain officers, employees, attorneys and engineers necessary or convenient for conduct of the business of Mesa Water, each of whom shall serve at the pleasure of the Board; and

WHEREAS, the Board has previously adopted Resolution No. 1307, establishing a policy to solicit proposals for outside auditing services for Mesa Water; and

WHEREAS, the Board desires to adopt an updated policy concerning the selection process for the appointment of general legal counsel and independent auditor for Mesa Water and superseding Resolution No. 1307.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MESA WATER DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. **Adoption of Policy.** The Board hereby adopts the Policy, attached hereto as Appendix A (Policy), entitled "Selection Process for the Appointment of General Legal Counsel and Independent Auditor".

Section 2. **Effective Date.** The Policy shall be effective immediately upon the date of adoption by the Board. Any amendment of, or exceptions to, the Policy shall be made by action(s) of the Board.

Section 3. **Resolution No. 1307 Superseded.** This Resolution shall supersede Resolution No. 1307 with regard to previously established policies for soliciting proposals for outside auditing services.

ADOPTED, SIGNED, and APPROVED this 8th day of June 2017 by a roll call vote.

AYES: DIRECTORS: Bockmiller, Dewane, Fisler, Atkinson, Temianka
NOES: DIRECTORS:
ABSENT: DIRECTORS:
ABSTAIN: DIRECTORS:



Coleen L. Monteleone
District Secretary



Ethan Temianka
President, Board of Directors

RESOLUTION NO. 1501

APPENDIX A

**RESOLUTION OF THE
MESA WATER DISTRICT BOARD OF DIRECTORS
ESTABLISHING A POLICY FOR THE SELECTION PROCESS
FOR THE APPOINTMENT OF GENERAL LEGAL COUNSEL AND
INDEPENDENT AUDITOR, SUPERSEDING RESOLUTION NO. 1307**

Selection Process for the Appointment of General Legal Counsel and Independent Auditor

SELECTION PROCESS FOR THE APPOINTMENT OF GENERAL LEGAL COUNSEL AND INDEPENDENT AUDITOR

I. Purpose

The purpose of this policy (Policy) is to set forth the selection process for certain positions appointed by and reporting to Mesa Water District's (Mesa Water) Board of Directors (Board) and to provide for certain related matters.

II. General

- A. The Board retains and shall have the authority and responsibility to select, appoint, negotiate terms for, prescribe scope of services, and directly receive reports and information from, the following:
 - 1. General Legal Counsel; and
 - 2. Independent Auditor.

- B. **Appointments Made by the Board** – Appointments of General Legal Counsel and Independent Auditor shall be made by the Board. The Board may delegate such to a committee or the General Manager to make recommendations to the Board.

- C. **General Legal Counsel (Counsel)** – shall serve as the attorney for the District and its Board in all general legal matters pertaining to the operation, maintenance, and other related business of Mesa Water. Counsel shall perform such duties as the Board, General Manager, and designated Mesa Water staff may request or direct. Counsel shall attend and/or participate in Board meetings and other meetings as directed by the Board or the General Manager.

- D. **Independent Auditor (Auditor)** – shall conduct an annual financial audit of Mesa Water and the Mesa Consolidated Water District Improvement Corporation. The Auditor shall review applicable financial statements and prepare the audit report for the preceding fiscal year. Such audit reports shall conform to Mesa Water's adopted financial and reporting policies and the applicable requirements of State law. The Auditor shall report, directly to the Board and/or the Audit Committee, any suspected financial irregularities, or other matters which present significant material weakness to Mesa Water. Such matters should simultaneously be reported by Mesa Water's Treasurer to the Board President. Suspected criminal matters shall be promptly reported to the appropriate law enforcement agencies for investigation.

- E. The Audit Committee will review the performance of the Auditor on at least an annual basis and make any recommendations concerning the performance of the Auditor to the Board.

SELECTION PROCESS FOR THE APPOINTMENT OF GENERAL LEGAL COUNSEL AND INDEPENDENT AUDITOR

III. Selection/Appointment Process

- A. Selections made pursuant to this Policy will be made from a group of, pre-selected candidates who have been approved by the Board or responsible committee.
 - 1. General Legal Counsel Services
 - a. A competitive process will be held at a minimum every five years for the selection of Counsel.
 - b. The Board will meet to conduct the interview and selection of Counsel.
 - 2. Auditing Services
 - a. A competitive process will be held at a minimum after five consecutive years with the same independent auditing firm.
 - b. The Board authorizes the General Manager to send Requests for Proposal to audit firms after three consecutive annual reports by the same firm, unless the renewal provision is invoked by the Board, and if desired, may include the then-current Auditor in the proposal process.
 - c. The Board requires mandatory audit rotation when the then-present audit firm has completed five consecutive annual financial audits.
 - d. The Board will meet to conduct the interview and selection process of Auditor.
- B. Appointments made following the selection process shall conform to the provisions of Section II.B hereof.

IV. Selection Criteria

- A. Candidates for the position of Counsel must, at a minimum, be members in good standing of the State Bar of California and licensed to practice law in the State of California. Further, they shall demonstrate a comprehensive knowledge of laws governing the public sector and independent special districts. They or their firm shall have not less than 10 years of experience representing special districts such as water, wastewater, and groundwater management agencies. Experience representing cities, counties, or other forms of government do not count for purposes of determining the minimum required experience. Mesa Water reserves the right to establish any selection criteria for Counsel when soliciting proposals for such position.

**SELECTION PROCESS FOR THE APPOINTMENT
OF GENERAL LEGAL COUNSEL AND INDEPENDENT AUDITOR**

- B. Candidates for the position of Auditor must, at a minimum, be a qualified independent certified public accounting firms licensed to practice in the State of California. Firms shall demonstrate complete independence from Mesa Water and the ability to maintain independence throughout the engagement period. Mesa Water reserves the right to establish any selection criteria for Auditor when soliciting proposals for such position.
- C. The Board authorizes the General Manager to reject any proposal submitted by any firm that has performed the five consecutive audits immediately prior to the solicitation of proposals for Auditor services.
- D. Other Criteria

Other than the mandatory criteria mentioned above, the Board may select the person(s) or firm to represent Mesa Water as Counsel or Auditor based on criteria relevant to the business of Mesa Water such as experience in the industry in which Mesa Water operates, references, cost and any other matters deemed relevant by the Board.

V. Conflict of Interest

- A. It shall be the responsibility of the Counsel/Auditor retained by the Board to promptly identify potential conflicts of interest in the provision of their respective services to Mesa Water. Further, the Board shall hire special Counsel/Auditor in the event a conflict should arise with the existing Counsel/Auditor.
- B. Notwithstanding Section V. A. above, the parties to a Counsel or Auditor contract may also choose to enter into a conflict wavier agreement or similar arrangement.

VI. Contracts: Term of Contract

- A. All contracts for the provision of Counsel or Auditor services shall be in writing and shall be approved by the Board prior to execution by, or on behalf of, Mesa Water. All such contracts shall set out the terms of service and shall conform to Mesa Water's then-current policies applicable to the retention of professional services.
- B. General Legal Counsel – Unless otherwise specified by the Board, the initial contract term shall be for a period of five years.
 - 1. Renewal Provision – Providing services are satisfactory, the Board may authorize up to two additional one-year renewals with the then-current Counsel.

**SELECTION PROCESS FOR THE APPOINTMENT
OF GENERAL LEGAL COUNSEL AND INDEPENDENT AUDITOR**

- C. Auditor – Unless otherwise specified by the Board, the initial contract term shall be for a period of three years.
 - 1. Renewal Provision – At the discretion of the Board, upon conclusion of the initial three-year term, the Board may authorize up to two additional one-year renewals with the current firm.
 - 2. It is the policy of the Board that Mesa Water shall not retain the same firm for the provision of Auditor services for a period of more than five years.

REPORTS:

2. REPORT OF THE GENERAL MANAGER

REPORTS:

3. DIRECTORS' REPORTS AND COMMENTS

There are no support materials for this item.