



WASHOE COUNTY

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CM/ACM _____

Finance N/A

DA N/A

Risk Mgt. N/A

HR N/A

Other N/A

STAFF REPORT

BOARD MEETING DATE: December 13, 2011

DATE: November 30, 2011

TO: Board of County Commissioners, STMGID Board of Trustees, STMGID Local Managing Board

FROM: Paul Lipparelli, Assistant District Attorney, Civil Division

SUBJECT: **Discussion and possible direction to staff on legal representation for the South Truckee Meadows General Improvement District for discussions related to the possible merger of STMGID's water service customers into Washoe County's Department of Water Resources' water utility. (Commission District Two)**

SUMMARY

As District Attorney (DA) staff has been discussing the statutory provisions relating to a possible merger of the South Truckee Meadows General Improvement District's (STMGID) water service customers into Washoe County Department of Water Resources' (DWR) water utility, the issue of ensuring the STMGID, as a separate legal entity, has appropriate legal representation has been raised. Among the issues discussed was how to structure the potential merger of STMGID into Washoe County to assure the satisfaction of the interests of the STMGID's property owners while also assuring that the interests of existing DWR customers and the other taxpayers of the county. Staff recognized that the potential for there to be divergent interests between STMGID's customers and DWR's raised issues about how to provide legal representation for STMGID for these discussions as, due to the fact that STMGID's Board of Trustees is currently and has historically been represented by the DA.

A lawyer is usually prevented from representing a client in a matter if the representation is directly adverse to the interests of another client.¹ The DA is mandated to provide legal services to the county including DWR. However, the DA is not statutorily mandated to provide legal services to STMGID. Since the interests of STMGID and the property owners in STMGID may be directly adverse to the interests of Washoe County, a decision needs to be made about how to provide legal representation to STMGID for legal services relating to the possible merger.

Staff has provided the following options for discussion:

1. Retain separate legal counsel for STMGID for all matters relating to the possible merger of STMGID into the County;
2. Under Rules 1.7 and 2.2 of the Nevada Rules of Professional Conduct, clients whose lawyers have potential conflicts of interest can give informed consent in writing for the lawyers to proceed with the representation. In this case, informed

¹ Rule 1.7 of the Nevada Rules of Professional Conduct.

consent in writing from STMGID Board of Trustees and the Board of County Commissioners would be required to protect the DA from any allegations of violations of the Nevada Rules of Professional Conduct.

Strategic Objective supported by this item: Sustainable Economic, Natural, Organizational, and Social Resources. **BCC Annual Goal supported by this item:** Sustainable resources linked to the needs of the public (public safety, security, health, cultural, recreational). The DWR will manage and protect regional water resources in a sustainable, cost-effective manner.

BACKGROUND

At the September 27, 2011 meeting of the Washoe County Board of Commissioners (Board) reviewed the proposals of each County department to reduce its budgets by 10% and approved the County Manager's recommendation to make cuts to various County Department budgets. These cuts are effective in the current fiscal year (FY 2011-2012) and included a \$1.74 million reduction in the Department of Water Resources' (DWR) budget. Among the proposals the County took action to cut County Department budgets and adopted the following proposed reduction package:

“Eliminate administrative overhead associated with maintaining STMGID as a separate entity. Merge STMGID 3,700 water service customers into DWR's water service customer base, maintain STMGID's current rate structure, which produces about \$2.5 million per year. Eliminate about \$400,000 in administrative costs without affecting water service to customers or cost of service to customers.”

During the Board's discussion of this item, DWR's staff was directed to work with the STMGID Local Managing Board (LMB) to develop a response to the Board's action.

The details of the contemplated merger could create issues involving the interests of STMGID property owners who currently pay STMGID for water service, and the interests of DWR water customers who currently pay the county. Issues could include rates for water service, connection fees, system maintenance and improvement, assumption of liabilities and indemnification. With written, informed consent in place from both STMGID and Washoe County, and as long as the process is productive, the DA is willing to attempt to provide the legal services to the parties to the merger. In the event that the process is not productive or STMGID Board of Trustees comes to believe that separate legal representation is necessary, the DA can withdraw from representing STMGID or both of the parties on this matter.

PREVIOUS ACTION

None

FISCAL IMPACT

If a separate legal counsel is retained, there will be an additional cost to STMGID for these services. Funds are available from STMGID's resources to cover these additional costs.

RECOMMENDATION

It is recommended that the Board of County Commissioners discuss and give possible direction to staff on legal representation for the South Truckee Meadows General Improvement District for discussions related to the possible merger of STMGID's water service customers into Washoe County's Department of Water Resources' water utility.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to give possible direction to staff on legal representation for the South Truckee Meadows General Improvement District for discussions related to the possible merger of STMGID's water service customers into Washoe County's Department of Water Resources' water utility."