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May 18, 2006

TO: Chairwoman Knight, Board Members, & General Manager

FROM: David C. Laredo

RE: Board Member Compensation / Expense Reimbursement

This memo reviews several issues relating to board member compensation and expense reimbursement and is intended for use in connection with discussions anticipated at the May 25, 2006 workshop on the 2006-7 budget. The topics of inquiry address (a) the amount of compensation for board members, (2) which meetings qualify for compensation, and (c) reimbursement of expenses for board members.

CONCLUSION

Board compensation is presently set at \$100 per meeting, with the maximum number of compensated meetings set at five (5) per month. The Board may increase the level of compensation, by ordinance, to \$110 per meeting and increase the maximum number of compensated meetings to ten (10) per calendar month.

Board compensation applies to attendance at MPWMD board meetings, meetings of any body that provides advice or direction to MPWMD, conferences or organized educational activities such as continuing education sessions, and other meetings as specified by MPWMD policy.

In addition to compensation reimbursement of actual and necessary expenses is allowed for board members to the extent these relate to the performance of official duties.

ANALYSIS

(a) Amount of Board Member Compensation

Rules governing compensation for board members of the Monterey Peninsula Water Management District (MPWMD) board of directors are, in general, set forth at California Water Code sections 20201 and 20202.

In general, the level of compensation for board members is limited to one hundred dollars (\$100) per day for each day's attendance at meetings of the board, or for each day's service rendered as a member of the board by Water Code section 20201. The full text of this section provides,

Notwithstanding any other provision of law, the governing board of any water district may, by ordinance adopted pursuant to this chapter, provide compensation

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to members of the governing board, unless any compensation is prohibited by its principal act, in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board, or for each day's service rendered as a member of the board by request of the board, and may, by ordinance adopted pursuant to this chapter, in accordance with Section 20202, increase the compensation received by members of the governing board above the amount of one hundred dollars (\$100) per day.

It is the intent of the Legislature that any future increase in compensation received by members of the governing board of a water district be authorized by an ordinance adopted pursuant to this chapter and not by an act of the Legislature.

For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

As to the number of days for which board members may be compensated, Water Code section 20202 enables reimbursement for up to ten (10) days in any calendar month.

Relying upon the general authority referenced above, MWPMMD board compensation was set at \$100 per meeting, with the maximum number of compensated meetings set at five (5) per month, by Ordinance No. 113, effective July 5, 2004.

The general rule limiting board member compensation to one hundred dollars (\$100) per day for attendance or service set forth may be modified pursuant to Water Code section 20202 to enable an increase in compensation above one hundred dollars (\$100) per day, provided that the increase may not exceed (5) percent for each calendar year following the operative date of the last adjustment. The full text of this section provides,

In any ordinance adopted pursuant to this chapter to increase the amount of compensation which may be received by members of the governing board of a water district above the amount of one hundred dollars (\$100) per day, the increase may not exceed an amount equal to 5 percent, for each calendar year following the operative date of the last adjustment, of the compensation which is received when the ordinance is adopted.

No ordinance adopted pursuant to this chapter shall authorize compensation for more than a total of 10 days in any calendar month.

Shortly after the beginning of the next fiscal year, July 1, 2006, two (2) years will have elapsed from the time the present level of MWPMMD board compensation was authorized (July 5, 2004). Accordingly the level of compensation may be increased to \$110 per meeting, provided the increase is duly authorized by an ordinance adopted in accordance with Water Code section 20202 and Government Code section 6066.

In addition, the board is also authorized to amend the maximum number of compensated meetings set at five (5) per month, by Ordinance No. 113, to another number provided that the maximum number does not exceed ten (10) meetings per month.

(b) Which Meetings Qualify for Compensation for Board Members.

Water Code section 20201 authorizes board member compensation for "each day's attendance at meetings" and provides that "the determination of whether a director's activities on any specific day are compensable" be made according to the rules set forth in the Government Code commencing with section 53232. Government Code section 53232.1 then provides,

(a) When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body for attendance at the following occurrences:

(1) A meeting of the legislative body.

(2) A meeting of an advisory body.

(3) A conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234).

(b) A local agency may pay compensation for attendance at occurrences not specified in subdivision (a) only if the governing body has adopted, in a public meeting, a written policy specifying other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.

By way of example, attendance at an ACWA ethics training session would constitute attendance at a meeting enabling compensation of the attending board members.

(c) Reimbursement of Board Member Expenses

In addition to the statutory limitations governing compensation for members of the MPWMD Board, the Government Code allows reimbursement of actual and necessary expenses incurred by board members in the performance of official duties. Gov. Code section 53232.2 provides,

(a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

Please do not hesitate to contact me if you have any question regarding the substance or application of the rules governing compensation for members of the MPWMD Board.

Sincerely,

De LAY & LAREDO

David C. Laredo