

## MEMORANDUM

**To:** *Metropolitan Water District of Salt Lake & Sandy Board of Trustees*

**From:** *Ad Hoc GRAMA Committee*

**Date:** *November 12, 2009*

**Re:** *Garside GRAMA appeals*

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On August 18, 2009, Jim Garside, 2077 East 1710 South Spanish Fork, Utah 84660, requested from this District the following documents pursuant to the Government Records Access and Management Act (GRAMA), Title 63 G, Chapter 2, Utah Code Ann.:

1-Copies of the invoices submitted for payment to the Metropolitan Water District of Salt Lake & Sandy from law firms, from lawyers, from legal service providers and from legal support services for the time period of January 1, 1990 to August 18, 2009.

2-1-[sic]Copies of the invoices submitted for payment to the Metropolitan Water District of Salt Lake & Sandy from lobbyists, from Public Relations companies, for public relations service of any kind for the time period of January 1, 1990 to August 18, 2009.

This District does not keep such documents for more than 4 years, consistent with state retention standards.

Nearly 900 pages of documents were produced. The District staff had classified certain portions of the documents as private or protected, and redacted those portions.

On September 25, 2009 Mr. Garside sent a document characterized as an "appeal." Pursuant to this District's Policies and Procedures, Chapter 9, GRAMA appeals are to this District's Board of Trustees. In all other respects Section 63G-2-401, Utah Code Ann., applies. Pursuant to this District's Policies and

Procedures, Chapter 1, the Board delegated the Garside appeal to an ad hoc committee of the Board for review and recommendation to the full Board.

The document designated as an appeal arguably did not comply with 63G-2-401(2), as a large portion of the material in the “appeal” appears irrelevant to the question of whether specified documents were improperly classified or improperly withheld. The appeal document is confusing enough to make it difficult to determine with confidence the relief being sought. However, the committee has determined that the specific pages or documents referenced in the bullet points in the appeal, and the specific pages attached to the appeal, describe the scope of the appeal.

Regarding a number of documents entitled “Remittance Page,” which are a part of Snow Christensen & Martineau invoices, Mr. Garside complains about a short redaction following the words “Matter Name:” Mr. Garside has already determined that the redacted words are “General Counsel.” The committee recommends that the Remittance Pages described in the bullet points of the appeal be produced without these words redacted.

Also regarding specifically listed Remittance Pages, the words “Our Matter Number:” is followed by a series of numbers denoting a number unique to the SCM document management system. Mr. Garside complains about this number being redacted. We believe this information is protected pursuant to 63G-2-305(11) and is properly withheld. However, in the interest of a resolution the committee recommends that 3 of the numerals be revealed to assure Mr. Garside that what was redacted was as described a number.

Next, Mr. Garside complains about the redactions in invoices of the firm of Fabian & Clendenin. It is clear that documents protected by attorney-client privilege and work product doctrine are not public documents under GRAMA. We believe that portions of these invoices contain information that is arguably protected as attorney-client communications and/or work product. Of particular concern to

staff and counsel when these documents were originally classified was the fact that they believed the litigation matter Fabian & Clendenin was handling may have involved common defenses with others, or joint defense agreements, and that other parties may have otherwise claimed at least a joint work product privilege. The concern was that any attempted waiver of a privilege by the District would have been inappropriate. In checking with that law firm, the committee determined that no joint privileges are applicable. Staff and counsel suggested, and the committee recommends to the Board, that any District privilege regarding these documents be waived and that they be produced.

Next, Mr. Garside complained about redactions in the invoices of the Trout, Raley firm. That firm has represented a coalition of entities in litigation. It was determined that those invoices would be subject to jointly held privileges that could not be waived by this District alone. In checking with Peter Nichols of that firm, he waived, with authority of his other clients, any privilege as to all but one page. As to that page he consented to waiver of privilege as to only one line. The committee recommends the District waive any privilege, but cooperate with Mr. Nichols' assertion of privilege on behalf of his other clients. The committee recommends that the Trout, Raley invoices be produced without redaction except for the information Mr. Nichols believes is privileged.

Next, Mr. Garside complains about redactions in an invoice of Snow, Christensen & Martineau regarding a matter where that firm represented the District and three other entities as clients in a litigation matter. Joint privileges would apply. Counsel has inquired of those other clients if they would be willing to waive privileges, and they declined. The committee recommends no additional information be provided to Mr. Garside regarding that invoice.

On October 16, 2009 Mr. Garside filed another GRAMA appeal. That matter also was assigned by the Board to the committee for recommendation. Mr. Garside had served a GRAMA request seeking documents that he assumed existed in District files because of statements made in the invoices of

Wilkinson Ferrari & Company. The committee is satisfied that such documents do not exist in the District's files.

The Committee recommends that the determination of the Board, together with a description of Mr. Garside's further appeal rights, be mailed to Mr. Garside as soon as practicable.