

CHAPTER 1 TRUSTEES

Last Updated: June 20, 2011

PREFACE

Certain provisions of this Chapter of the Policies and Procedures Manual (“P&P”) of the Metropolitan Water District of Salt Lake & Sandy (“District”) are mandated by statute, specific document signed or adopted as a part of the annexation of Sandy City into the District, contract, or bond document. In most such instances specific statutes, annexation documents, contracts, and bond documents are referenced. Except as mandated by applicable statute, annexation document, contract, or bond document, P&P Sections are subject to change by the Board of Trustees of the District (“Board”) without notice. Except as otherwise stated, or otherwise dictated by applicable law, these Sections contain “policies and procedures” which are mandatory directives of the Board to be followed by the Trustees and staff absent a different directive or approval of the Board. Absent sufficiently exigent circumstances, such different directive or approval of the Board should precede action which varies from these Sections. Occasionally the Board may adopt “regulations” pursuant to authority granted by Utah Code Ann. §§ 17B-1-103, 17B-1-301(2)(i) that have the force and effect of law, and may be applicable to the activities of persons or entities who are not Trustees or staff. Occasionally these P&P Sections are stated in terms of “goals,” “objectives” or “guidelines,” that give the Trustees and staff general direction, but do not mandate particular end results or particular procedures. Except as otherwise stated, or as otherwise provided by applicable law, these Sections are not intended to create any claim or cause of action, set any standard of care applicable to any claim or cause of action, nor provide any evidence of standard of care for the purposes of any claim or cause of action. The District’s General Manager (“GM”) is authorized to make non-substantive grammatical and format changes to the P&P. Utah Code Ann. Title 17B applies to Local Districts. Some parts of Title 17B apply only to specific kinds of Local Districts. For example, the Metropolitan Water District Act (MWD Act) is Part 6 of Chap. 2a of Title 17B, and that Part applies only to Metropolitan Water Districts. If there is a conflict between the MWD Act provisions and other Local District provisions, the MWD Act provisions take priority. Utah Code Ann. § 17B-2a-602(4).

1-1 NUMBER

Utah Code Ann., Title 17B, Chap. 1, Part 3 deals with Trustees. Utah Code Ann. § 17B-1-302 allows the Board to set the number of Trustees at an odd number of no less than 3 by a 2/3 vote. No change in the number of Trustees may shorten any Trustee’s term. Section 604 of the MWD Act, Utah Code Ann. § 17B-2a-604(2), allows the District to determine the number of Trustees by agreement with member cities. Pursuant to Paragraph 8 of District Resolution 1633, adopted as part of the annexation of Sandy City into the District, and approved by and relied upon by the District’s member cities, the total number of Trustees shall be 7. Five Trustees are appointed by the Salt Lake City

Council and 2 Trustees are appointed by the Sandy City Council. No change in the number of Trustees appointed by each member city of the District should be made without the written consent of both cities, and an amendment of District Resolution 1633.

1-2 APPOINTMENT, REMOVAL FOR CAUSE

Section 604 of the MWD Act, Utah Code Ann. § 17B-2a-604, allows for an elected board or gives city councils the power to appoint Trustees. The District's Board of Trustees has determined that it is in the best interests of the District for Trustees to be appointed. Utah Code Ann. § 17B-1-304 describes the procedures for selection and appointment of Trustees. Appointment must be by resolution after specific public notice of vacancy, qualifications, person to be contacted and deadlines for application, and after a public hearing. The appointment may not be made sooner than 2 months after the appointing city is notified of the vacancy. Pursuant to Utah Code Ann. § 17B-1-304(4) Trustees may be removed for cause after hearing by a 2/3 vote of the appointing city council.

1-3 QUALIFICATIONS, TRAINING

Utah Code Ann. § 17B-2a-604(4) requires Trustees to be registered voters and residents of the boundaries of the District. Utah Code Ann. § 17B-1-303(2)(c) provides that if a Trustee no longer meets these requirements the position is considered vacant, but the Trustee may continue to serve until a successor is duly appointed and qualified. Section 604 of the MWD Act, Utah Code Ann. § 17B-2a-604(4), requires that Trustees be registered voters, property taxpayers, and residents of the retail service area of the appointing city. Appointed officers and employees of an appointing city may not serve as Trustees, and such employment shall be considered grounds for immediate disqualification (see Utah Code Ann. § 17B-2a-604(5)(a)). In such an instance, the position shall remain vacant until filled under Utah Code Ann. § 17B-1-304 (see Utah Code Ann. § 17B-2a-604(5)(b)). Utah Code Ann. § 17B-1-312 requires that each Trustee receive training, per the curriculum developed by the state auditor in conjunction with the Utah Association of Special Districts, within 1 year of taking the oath of office. The failure of a Trustee to comply with this requirement does not disqualify that Trustee to act in any respect. Utah Code Ann. § 52-4-104 requires the presiding officer of the public body to ensure that the members of the public body are provided with annual training on the requirements of the Utah Open and Public Meetings Act, Utah Code Ann., Title 52, Chap. 4 ("Open Meetings Act").

1-4 TERM

Utah Code Ann. § 17B-1-304(4) sets Trustee terms at 4 years. Utah Code Ann. § 17B-1-303(2)(c)(ii) allows Trustees who move from the District or who are no longer registered to vote to serve until a successor is duly appointed and qualified. Trustees are not limited in the number of terms they may serve, however, the appointing city councils are free to adopt policies regarding term limits.

1-5 OATH

Utah Code Ann. § 17B-1-303(3) requires Trustees to take the oath of office contained in Article IV, Section 10 of the Utah Constitution before entering upon the duties of office. Failure to take the oath does not invalidate any official act of a Trustee. Article IV, Section 10 of the Utah Constitution states:

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this State, and that I will discharge the duties of my office with fidelity."

1-6 BOND

Utah Code Ann. § 17B-1-303(7) requires Trustees to give a bond for the faithful performance of their duties, in an amount and with the sureties prescribed by the Board, at District cost. Unless otherwise directed by the Board, the District intends to meet this Trustee bond requirement by maintaining an employee dishonesty insurance policy, with an endorsement covering the faithful performance of Trustees. Absence of the employee dishonesty insurance policy or Trustee endorsement does not invalidate any official act of any Trustee. As described in P&P Section 1-14(4)(b), the Finance Committee should periodically review the employee dishonesty insurance policy and Trustee endorsement, and make appropriate recommendations to the Board.

1-7 CONFLICTS OF INTEREST

Utah Code Ann. § 17B-1-311 prohibits a Trustee from serving while employed by the District as a contractor or employee. The Utah Public Officers' and Employees' Ethics Act, Utah Code Ann., Title 67, Chapter 16, is applicable to District Trustees and employees. In addition, as a matter of District guideline, Trustees are expected to disclose to the Board any interests, direct or indirect, in any District transaction or proposed transaction that has, or may have, the substantial likelihood of giving the appearance of impropriety.

1-8 COMPENSATION AND TRAVEL EXPENSES

(1) Annual Compensation. To the extent of an unencumbered appropriation for this purpose in the annual budget, and the Board approves the expenditure, Trustees are eligible to receive annual compensation to the maximum allowed by law, payable monthly for each full month of service or major portion thereof. A Trustee may decline to receive annual compensation.

(2) Per Diem Compensation and Travel Expenses. To the extent of an unencumbered appropriation for this purpose in the annual budget, and the Board approves the expenditure, in addition to annual compensation described in P&P Section 1-8(1), Trustees are eligible to receive per diem compensation and travel expenses for attendance at up to 12 meetings or activities per year related to District business. Per diem compensation and travel expenses shall be as established by the Division of Finance for policy boards, advisory boards, counsels or committees within state government. Trustees are eligible to receive per diem compensation and travel expenses for attending Board meetings, committee meetings, city council meetings, legislative sessions, community council meetings, conferences, seminars, dispute resolutions sessions or court hearings, hearings regarding employment or procurement issues, other meetings on behalf of the District, and in performing official duties. The allowed per diem compensation and travel expenses shall be approved by the Board upon recommendation of the Executive Committee, consistent with Division of Finance guidelines, IRS schedules, and/or rates generally prevailing for reimbursement by employers, as described in P&P Section 1-14(1)(d). A Trustee may decline to receive per diem compensation and travel expenses.

1-9 POWERS

Pursuant to Utah Code Ann. § 17B-1-301 all powers of the District are exercised by the Board, either directly or through delegated authority. In addition to other powers provided by law, the Board may:

- (1) fix the location of the District's principal place of business and the location of all offices and departments, if any;
- (2) fix the times of meetings of the Board;
- (3) select and use an official District seal;
- (4) employ employees and agents, or delegate to District officers the power to employ employees and agents for the operation of the District and its properties, and prescribe or delegate to District officers the power to prescribe the duties, compensation, and terms and conditions of employment of those employees and agents;
- (5) require District officers and employees charged with the handling of District funds to provide surety bonds in an amount set by the Board or to provide a blanket surety bond to cover all of those officers and employees;
- (6) contract for or employ professionals to perform work or services for the District that cannot satisfactorily be performed by the officers or employees of the District;

(7) through counsel, prosecute on behalf of the District or defend the District in all court actions or other proceedings in which the District is a party or is otherwise involved;

(8) adopt bylaws for the orderly functioning of the Board;

(9) adopt and enforce rules and regulations for the orderly operation of the District and for carrying out the purposes for which the District was created;

(10) prescribe a system of civil service for District employees;

(11) on behalf of the District, enter into contracts that the Board considers to be for the benefit of the District;

(12) acquire, construct or cause to be constructed, operate, occupy, control, and use buildings, works, or other facilities for carrying out the purposes of the District;

(13) on behalf of the District, acquire, use, hold, manage, occupy and possess property necessary to carry out the purposes of the District, dispose of property when the Board considers it appropriate, and institute and maintain in the name of the District any action or proceeding to enforce, maintain, protect, or preserve rights or privileges associated with District property;

(14) delegate to a District officer; and

(15) exercise all powers and perform all functions in the operation of the District and its properties as are ordinarily exercised by the governing body of a political subdivision of the state and as are necessary to accomplish the purposes of the District.

1-10 QUORUM

Except as otherwise expressly required by applicable statute, District regulation, or District policy, 4 Trustees shall constitute a quorum. Any action of the Board shall require the affirmative vote of at least 4 Trustees. As described in P&P Section 1-11(8), and Utah Code Ann. § 52-4-204(1)(b), a motion to move into closed meeting requires a 2/3 vote (4 of 4, 4 of 5, 4 of 6, 5 of 7) during an open meeting for which 24 hours notice was given.

1-11 MEETINGS

(1) Open and Public Meetings Act. All Board meetings, including workshops, retreats and executive sessions, must comply with the Open Meetings Act, Utah Code Ann., Title 52, Chap. 4. This section is to be interpreted in a manner consistent with the Open Meetings Act.

(2) Definitions. The definitions contained in the Open Meetings Act are applicable to this section.

(3) Annual Meeting Schedule. At or near the beginning of the calendar year, the Board will establish a regular meeting schedule, including date, time and place. The schedule may be modified with appropriate notice.

(4) Notice. Except in emergencies, the District will give not less than 24 hours notice to the Trustees and the public of any Board meeting, including agenda, date, time and place. Meetings to discuss certain matters require more than 24 hours notice. Examples include the following:

(a) As described in P&P Section 3-630, and Utah Code Ann. § 17B-1-630, a meeting called to consider a resolution to increase in appropriations for operating or capital budget funds requires at least 5 days notice to all Trustees. This notice requirement may be waived in writing or orally at the meeting by any Trustee.

(b) As described in P&P Section 3-629, and Utah Code Ann. §§ 17B-1-629 and 17B-1-609(1)(i), a public hearing to consider the budget requires publication of notice at least 7 days before the hearing.

(c) Utah Code Ann. § 59-2-919 requires a very particular form of notice published once a week for 2 consecutive weeks prior to a hearing to consider a tax levy.

(d) As described in P&P Section 3-643, and Utah Code Ann. § 17B-1-643, a public hearing to discuss an increased fee requires a very particular form of notice published in the newspaper once a week for 2 consecutive weeks before the hearing.

(e) As described in Utah Code Ann. § 11-14a-1, any new debt resolution must be adopted only after a very particular form of notice published once a week for 2 consecutive weeks before adoption of the new debt resolution.

(f) A public hearing to consider annexation may, under some circumstances, require particular notice described in Utah Code Ann. § 17B-1-410.

(g) A public hearing to consider withdrawal of property from the District may, under some circumstances, require particular notice described in Utah Code Ann. § 17B-1-509.

(5) Methods of Providing Meeting Notice. Notice of meetings, including agenda, date, time and place, will be available to the public at the District offices, will be posted on the Utah Public Notice Website, and will be posted to the District's web page. Reasonable efforts will also be made to provide notice to the member cities in a manner requested by the member cities.

(6) Emergency Meetings. Meetings to consider matters of an emergency or urgent nature include meetings held for the purposes of addressing circumstances that may pose an imminent and substantial risk of material pecuniary or physical loss or inconvenience to the District, its employees, its member cities, or the public. When because of unforeseen circumstances it is necessary to consider matters of an emergency or urgent nature, Board meetings may be held only if:

- (a) the best practicable notice of the time and place of the meeting and the topics to be considered has been given;
- (b) an attempt has been made to notify all Trustees; and
- (c) a majority of the Trustees approves holding the meeting.

(7) Agenda. District staff, under the direction of the Chair, will prepare an agenda for Board meetings. Any item timely requested by any Trustee will be placed on the agenda. Except in an emergency meeting, the Board may not take final action on a topic unless that topic is listed under an agenda item and included with the advance public notice required by this section. At the discretion of the presiding member of the Board, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

(8) Closed Meetings. Closure of a meeting requires at least a 2/3 vote of Trustees present at an open meeting where a quorum is present, and for which the required notice has been given (4 of 4, 4 of 5, 4 of 6, 5 of 7). In addition, P&P Section 1-10 requires a minimum affirmative vote of 4 Trustees for any matter. The reason or reasons for holding a closed meeting, the location of the closed meeting, and the vote cast regarding closure by each Trustee, shall be entered in the minutes and record of the open meeting at which the closed meeting was approved. It is the Board's practice, but not a requirement, to seek advice from General Counsel that the purpose for closing the meeting is appropriate under the Open Meetings Act. Such advice should be noted on the minutes and record of the meeting. No ordinance, resolution, rule, regulation, contract, or appointment shall be approved in a closed meeting. This does not prohibit other actions to be taken by the Board. Meetings may be closed only for the following reasons:

- (a) discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including water right(s) or water share(s), when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the District from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including water right(s) or water share(s), if: (A) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the District from completing the transaction on the best possible terms; (B) the District had previously given public notice that the property would be offered for sale; and (C) the terms of the sale are publicly disclosed before the District approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems; or

(g) investigative proceedings regarding allegations of criminal misconduct.

(9) Meeting Minutes and Recordings. Excepting only where a meeting is closed to discuss the character, professional competence, or physical or mental health of an individual, or to discuss the deployment of security personnel, devices, or systems, written minutes and a recording shall be kept of all meetings. When a meeting is closed to discuss the character, professional competence, or physical or mental health of an individual, or to discuss the deployment of security personnel, devices, or systems, minutes only shall be kept. A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting, and shall be properly labeled or identified with the date, time and place of the meeting. Written minutes or recording of an open meeting must be converted for and maintained in long-term storage. Such minutes and recordings shall include:

(a) the date, time and place of the meeting; and

(b) the names of Trustees present and absent; and

(c) the substance of all matters proposed, discussed, or decided by the Board, which may including a summary of comments made by Trustees; and

(d) a record, by individual Trustee, of votes taken; and

(e) the names of each person who is not a member of the Board, and after being recognized by the presiding member of the Board, that provided testimony to the Board and the substance in brief of their testimony or comments; and

(f) all other information that is a record of the proceedings of the meeting that any Trustee requests be entered in the minutes or recording.

(10) Government Records Access and Management Act. Both approved minutes of open meetings are public records and shall be available within a reasonable time after approval of the minutes. Recordings of open meetings will be available for public listening within three (3) business days after the end of the meeting. Both the recording and written minutes of closed meetings are protected records and may be disclosed only pursuant to a court order as provided in Utah Code Ann. § 52-4-304.

(11) Recording of Open Meetings by Others. All or any part of an open meeting may be recorded by any person in attendance so long as the recording does not interfere with the conduct of the meeting.

(12) Electronic Meetings. The District may hold electronic meetings in compliance with Utah Code Ann. § 52-4-207. In addition to the requirements above for other meetings, the notice will include a description of how Trustees will be connected, will establish one or more anchor locations for the public meeting, at least one of which is the District's large conference room, and state if public comment will be accepted during the meeting. Space and facilities shall be provided at the anchor location so that interested persons and the public may attend, monitor and participate in the open portions of the meeting.

(13) Conduct of the Meeting. Except as otherwise provided by the P&P or applicable law, or as directed by the Chair, meetings will be conducted pursuant to Robert's Rules. Board meetings will be conducted by the Chair if present, by the Vice-Chair in the Chair's absence, by the Secretary in the absence of the Chair and Vice-Chair, or by a Trustee elected by the Board in the absence of the Chair, Vice-Chair and Secretary. The Trustee conducting the meeting may make or second motions and may vote on any matters upon which a vote is called for. The Trustee conducting the meeting may establish parameters for the conduct for public hearings designed to maintain order and decorum and fairly apportion available time. Absent consent of the Chair in advance, public comments should be limited to 5 minutes.

(14) The Trustee presiding over the meeting may, without motion or vote, expel a person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised. Any Trustee may move the expulsion of a person under such circumstances.

1-12 BOARD OFFICERS

Utah Code Ann. § 17B-1-309 states that the Board shall elect a Chair, and may elect other officers as the Board considers appropriate. The Board will select from among its members a Chair, a Vice-Chair and a Secretary. Each Board officer serves at the pleasure of the Board for a term of one (1) year from July 1 to June 30 the following year,

unless earlier removed or replaced by the Board. Each Board officer shall serve until replaced.

1-13 GENERAL MANAGER AND GENERAL COUNSEL

The Board will appoint a General Manager (“GM”), and General Counsel who are not Trustees. The GM and General Counsel serve at the pleasure of the Board.

1-14 COMMITTEES OF THE BOARD OF TRUSTEES

Standing committees of the Board shall include the Executive Committee, the Management Advisory Committee, the Engineering Committee, the Finance Committee and the Conservation Committee. The Executive Committee consists of the Chair, Vice-Chair and Secretary. Members of other standing committees shall be appointed by the Board. The Board may appoint additional ad hoc committees. Except as otherwise determined by the Board, the authority of standing and ad hoc committees shall be limited to recommending action to the Board. The descriptions of general guidelines for the roles of standing committees below are not intended to limit the right of any Trustee to bring any discussion or action item before the Board.

(1) The Executive Committee will:

(a) Recommend action to the Board regarding the hiring, firing and compensation of the GM and General Counsel.

(b) Recommend action to the Board regarding the written appointment of a proxy, and the written instructions and authority to be given to such proxy, for the voting of the District’s shares of Provo River Water Users Association (PRWUA) stock, in a manner consistent with the PRWUA Articles of Incorporation and Bylaws.

(c) Recommend action to the Board regarding the written appointment of a proxy for the voting of any other shares of stock held by the District.

(d) Recommend action to the Board regarding per diem Trustee compensation and Trustee travel expenses as described in P&P Section 1- 8(2).

(2) The Management Advisory Committee will:

(a) Periodically review the P&P other than Chapters regarding Fiscal and Budget, Investment, and Debt and recommend action to the Board.

(b) Recommend action to the Board regarding staffing levels and compensation of District employees other than the GM and General Counsel.

(c) Periodically review the Employee Manual and Safety Manual, and recommend action to staff.

(d) Hear grievances of employees in a manner described by the P&P Section 10-23.

(e) Recommend action to the Board regarding government and public relations activities.

(f) Declare property surplus as described in P&P Section 7-3.

(3) The Engineering Committee will:

(a) Recommend action to the Board regarding the purchase, design, construction, repair, replacement, or improvement of physical facilities.

(b) Approve the contracts and expenditures relating to the purchase, design, construction, repair, replacement, or improvement of physical facilities, as described in P&P Section 3-642(4).

(c) Recommend action to the Board regarding regulations for non-District use of rights-of-way.

(d) Hear appeals of affected property owners regarding non-District use of rights-of-way.

(4) The Finance Committee will:

(a) Annually, and prior to the adoption of a tentative budget, recommend to the Board reserve fund balances, and recommend the disposition of reserve fund balances in excess of District goals, as described in P&P Section 3-612(7).

(b) Recommend action to the Board regarding insurance, risk management, financial, accounting, budgetary and auditing matters.

(c) Periodically review the District's outstanding bonds, bond commitments and projected bonding requirements, and recommend action to the Board consistent with P&P Chapter 5.

(d) Periodically review the P&P Chapters regarding Fiscal and Budget, Investment, and Debt, and recommend action to the Board.

(e) Review all District expenditures at least quarterly to see that such expenditures appear to have been properly budgeted, that applicable procurement

regulations appear to have been followed, and that the expenditures appear to have been properly approved. This is intended to meet the requirement of Utah Code Ann. § 17B-1-642(3) that “the governing body shall, at least quarterly, review all expenditures authorized by the financial officer.”

(f) Recommend the selection of an auditor as described in P&P Section 3-640, bond counsel, financial advisor, and bond underwriter.

(g) Periodically review the District’s investments and the Treasurer’s periodic report regarding District investments described in P&P Sections 3-633 and 4-3, and recommend action to the Board.

(5) The Conservation Committee will:

(a) recommend action to the Board regarding the sustainable development and wise use of water, energy and other resources after consideration of the relevant goals and activities of the member cities, associated districts and the state.

AFFIDAVIT

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

_____, of the Board of Trustees of the Metropolitan Water District of Salt Lake & Sandy, upon oath, deposes and says that:

1. I presided at the Board meeting of the Metropolitan Water District of Salt Lake & Sandy held on _____ at its office at 3430 East Danish Road, Cottonwood Heights, Utah.

2. I hereby affirm that the sole purpose of the closed portion of the foregoing meeting was to discuss:

the character, professional competence, or physical or mental health of an individual;
or

the deployment of security personnel, devices, or systems.

DATED this ___ day of _____, 20__.

Trustee

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20__.

My Commission Expires:

NOTARY PUBLIC
Residing at: _____