


Robert J. Daddow  
Special Projects Deputy County Executive

TO: The Honorable Board of Directors, Great Lakes Water Authority

FROM: Robert Daddow, Board Director 

DATE: January 9, 2018

RE: Proposed Board of Directors' Policy and Process Involving Litigation, Including Litigation Settlement Offers, Settlements and Other Related Matters

MOTION

Upon recommendation of Robert Daddow, Board Director, the Board of Directors (Board) of the Great Lakes Water Authority (GLWA) authorizes and adopts the following litigation policies and process relating to litigation involving GLWA and outside parties:

- The GLWA administration may provide settlement offers and settle litigation in an amount less than \$25,000 without Board or Board Legal Committee approval.

At times, litigation may involve a single underlying event with multiple plaintiffs that might result in individual settlement offers and / or settlements less than \$25,000 but when combined aggregate above the noted thresholds. When considering the dollar thresholds involving such litigation, GLWA administration is to consider the aggregate dollar impact on GLWA of all individual claims asserted by the plaintiffs when applying these thresholds here and in other sections of this resolution.

- For all settlement offers and subsequently settlements of or greater than \$25,000 but less than \$100,000, the GLWA administration shall provide timely notice to the Board's Legal Committee members, as follows:

- The Board's Legal Committee shall review the underlying legal matters involved in the litigation claim, assess its financial and other impact on GLWA, including considering likelihood of successful defense, and approve or disapprove the settlement offer.

In the event of a time-sensitive need to provide a settlement offer, the GLWA administration shall consult with the Legal Committee and Board Chairman (Vice-Chairman in lieu thereof) and secure an approval to proceed.

- All settlements greater than \$25,000 but less than \$100,000 shall be approved or disapproved by the Legal Committee.
- No less than quarterly, the complete listing of outstanding litigation facing GLWA shall be reviewed by the Legal Committee with the GLWA General Counsel as to status,

(meaning GLWA would be expected to fund half of the settlement costs, or \$14.75 million as a 'common-to-all' cost). Given that the suburban wholesale sewer customers cover roughly 52% to 60% of the common-to-all costs, the GLWA administration's agreement would be paid, in large part, by the suburban interests.

A \$10.0 million payment was due to the Settlement Trust on December 31, 2017 with the remaining \$19.5 million being paid in early July 2018. The latter payment is to be either credited to the DWSD-R customer accounts based upon the claims to be filed by the various customers in either cash refund or credit against future sewer bills. The GLWA Board voted on a 4-2 basis on December 21, 2017 (two dissenting votes from Oakland and Macomb Counties) to pay half of the amount due by December 31, 2017 from existing GLWA resources.

The GLWA Board provided no approval or authorization for GLWA administration to sign off on the Michigan Warehousing Group LLC settlement. No discussions were held with the Board or any notice whatsoever during the 2017 summer months leading up to DWSD-R's signing the settlement agreement on August 31, 2017 despite the Board of Directors holding approximately roughly two meetings per month (six meetings since the settlement was signed on August 31, 2017). Nor was the Legal Committee of the Board of Director called for consultation. Nor, was there any notice to the Board that GLWA wholesale customers (based on the GLWA administration assumptions and DWSD-R) would assume a sizable portion of the \$14.75 million in the litigation settlement as 'common-to-all' costs arising from Detroit's excess stormwater charges now being returned to the DWSD-R customers.

With regard to the relationship of attorneys with their clients, the following obligations are outlined in the Michigan Rules of Professional Conduct (MRPC) – in this case, the GLWA Board of Directors:

- MRPC 1.4 (a) – "A lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information. ***The lawyer is also required to notify the client promptly of all settlement offers, .....***" Emphasis Added.
- MRPC 1.4. (b) – "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

During the course of discussing the Michigan Warehousing Group, LLC litigation, 16 other settlements were discovered in the amount of \$5,417,000 in total, including the largest settlement involving United House of Prayer v. DWSD. In the United House of Prayer matter, which was brought using the same plaintiff's attorneys as Michigan Warehousing Group, LLC and asserted similar claims, was settled for \$5 million, with GLWA paying \$4 million of the settlement to DWSD-R customers. The remaining 15 settlements involved payments of between \$44 to \$150,000 per claim. The GLWA Board had no knowledge of these settlement offers, settlements or payments prior to inquiries arising from the Michigan Warehousing Group, LLC matter.

Despite the agreement reached by DWSD-R and the GLWA administration having been reached in August 2017, no discussions of this agreement occurred during the intervening over two month period through the notice of the Oakland County Board representative bringing this matter to the forefront. Ample opportunity existed to notice the Board members during this intervening period.

In fact, the GLWA administration asserted that they were using the purchasing policies' level of notice to the Board as justification for not noticing the Board involving 15 settled claims of amounts in excess of