



**RANDAL M. BROWN**  
General Counsel  
Suite 1900  
313.964.9068

## **GREAT LAKES WATER AUTHORITY SETTLEMENT POLICY**

On February 28, 2018, the Board of Directors (Board) of the Great Lakes Water Authority (“GLWA”) authorized and adopted the following settlement policy (“Settlement Policy”) for resolving claims, administrative proceedings, mediations, arbitrations, and / or litigation (“Actions”):

- (1) For and against GLWA (“GLWA Action(s)”); and
- (2) Against the City of Detroit and/or the Detroit Water and Sewerage Department (“DWSD”), which allege liabilities in existence on or before December 31, 2015 and the liability was transferred to and / or assumed by GLWA, pursuant to Article IV of the Regional Sewage Disposal System Lease and / or the Regional Water Supply System Lease (“DWSD Action(s)”).

### **DEFINITIONS**

For purposes of this Policy the following terms shall have the following meanings:

*BOARD* means the GLWA Board of Directors.

*DWSD ACTION* means claims, administrative proceedings, mediations, arbitrations, and /or litigation, including but not limited to an arbitration proceeding commenced pursuant to the provisions of the Regional Water Supply System Lease, Regional Sewage Disposal System Lease, Water and Sewer Services Agreement, and/or other agreement between GLWA and the City of Detroit, in which DWSD asserts that GLWA should allocate funds to the settlement.

*GLWA* means the Great Lakes Water Authority, its Board, Officers, Employees, and assigns.

*GLWA ACTION* means claims, administrative proceedings, mediations, arbitrations, and / or litigation, except for following types of actions for or against GLWA:

- A) Administrative claims or citations arising out of the employment relationship between GLWA and its employees including by way of example and not limitation:
  - i) Michigan Occupational Health and Safety Agency (MIOSHA)
  - ii) Grievances claims pursuant to a collective bargaining agreement including Unfair Labor Practices charges and other matters brought before the Michigan Employment Relations Commission (MERC)
- B) Administrative adjustments to an invoice or other steps taken by GLWA’s designated Contract Administrator pursuant to a GLWA contract to resolve business issues related to that contract
- C) Matters, such as automobile liability claims which GLWA has assigned to a Third Party Administrator for adjustment pursuant to contract approved by the Board; and

D) Any other matter or proceeding, if any, which the Board has determined should be exempted from this Policy.

*PROPOSED SETTLEMENT AMOUNT* means the settlement amount, which GLWA's Chief Executive Officer ("CEO") or General Counsel recommends to the Board to settle a GLWA Action.

*PROPOSED SETTLEMENT ALLOCATION* means the contribution of funds by GLWA to settle a DWSD Action.

### **GLWA ACTIONS**

- **Settlement Threshold.** Upon the recommendation of GLWA's General Counsel, GLWA's CEO has the authority to settle a GLWA Action in any amount less than \$125,000.00 without Board approval.
  - At times, a GLWA Action may involve a single underlying event with multiple claimants or plaintiffs ("Related GLWA Actions") that might result in separate Settlements of less than \$125,000.00; but, when combined, aggregate above the settlement threshold. When evaluating the settlement value of a GLWA Action, the value of all Related GLWA Actions shall be considered when determining the aggregate dollar impact on GLWA. If the aggregate dollar impact on GLWA is more than \$125,000.00, the GLWA Action and all Related GLWA Actions shall be approved by the Board.
  - GLWA's CEO has the discretion to refer to the Board for approval a Proposed Settlement Amount of a GLWA Action that is less than \$125,000.00.
- **Committee Referral.** A Proposed Settlement Amount greater than \$125,000.00 shall be referred by GLWA's CEO or General Counsel to the Board's Legal Committee for its consideration.
- **Committee Consideration.** For each Proposed Settlement Amount greater than \$125,000.00, the Legal Committee shall consider, by way of example and without limitation, the following factors:
  - The factual allegations
  - The financial impact on GLWA
  - The likelihood of successful defense
  - GLWA's General Counsel's recommendation
  - Such other considerations of importance to the Legal Committee or Board, as appropriate
- **Committee Recommendation.** The Legal Committee shall return one of the following recommendations to the Board within 30 days of the Proposed Settlement Amount referral: (i) recommended for approval, (ii) not recommended for approval, or (iii) referred without recommendation.
- **Exception.** In the event of a time-sensitive need to approve a Proposed Settlement Amount, GLWA's CEO may refer the Proposed Settlement Amount directly to the Board at a regularly scheduled or Special Meeting for approval.

### **DWSD ACTIONS**

- **Settlement Allocation Threshold.** Upon the recommendation of GLWA's General Counsel, GLWA's CEO has the authority to allocate GLWA funds to the settlement of a DWSD Action in any amount less than \$125,000.00 without Board approval.
  - At times, a DWSD Action may involve a single underlying event with multiple claimants or plaintiffs ("Related DWSD Actions") that might result in separate settlements of less than \$125,000.00; but, when combined, aggregate above the threshold. When evaluating the Settlement value of a DWSD Action, the value of all Related DWSD Actions shall be considered when determining the aggregate dollar impact on GLWA. If the aggregate dollar impact on GLWA is more than \$125,000.00, the DWSD Action and all Related DWSD Actions shall be approved by the Board.
  - The CEO has the discretion to refer to the Board for approval a proposed Settlement allocation of a DWSD Action of less than \$125,000.00.
- **Committee Referral.** Except as provided below, all Proposed Settlement Allocations greater than \$125,000.00 shall be referred by GLWA's CEO or General Counsel to the Board's Legal Committee.
- **Committee Consideration.** For each Proposed Settlement Allocation, the Legal Committee shall consider, by way of example and without limitation, the following factors:
  - The factual allegations
  - The financial impact on GLWA
  - The amount of the alleged liability in existence on or before December 31, 2015
  - Whether the alleged liability was transferred and / or assumed by GLWA, pursuant to Article IV of Regional Sewage Disposal System Lease and / or the Regional Water Supply System Lease
  - The Proposed Settlement Allocation between DWSD and GLWA, including GLWA's General Counsel's recommendation on the Proposed Settlement Allocation
  - The likelihood of successful defense
  - Such other considerations of importance to the Legal Committee or Board, as appropriate
- **Committee Recommendation.** The Legal Committee shall return one of the following recommendations to the Board within 30 days of the Proposed Settlement Allocation referral: (i) recommended for approval, (ii) not recommended for approval, or (iii) referred without recommendation.
- **Exception.** In the event of a time-sensitive need to approve a Proposed Settlement Allocation, GLWA's CEO or General Counsel may refer the Proposed Settlement Allocation directly to the Board for approval at a regular or Special Meeting of the Board.
- **Written Agreement.** In each instance that GLWA allocates funds to settle a DWSD Action, GLWA shall enter into a written agreement with DWSD memorializing the terms and conditions of the settlement allocation.

### **REPORTING REQUIREMENTS**

- **Timing.** GLWA's General Counsel shall list all settlements of GLWA Actions and settlement allocations of DWSD Actions in the CEO Report within 30 days of GLWA's General Counsel's receipt of a fully executed settlement agreement.
- **Committee Review.** No less than quarterly, the complete listing of all pending Actions shall be reviewed by the Legal Committee with General Counsel as to status, likelihood of success, actions required, settlement offers and demands, and other pertinent information involving such pending Actions.
- **Trial Reporting.** Within 30 days of the start of a trial on an Action, GLWA's General Counsel shall meet and confer with the Legal Committee to discuss the following:
  - The factual allegations
  - The potential witnesses
  - The potential financial impact on GLWA, including the Action's costs to date and anticipated through trial
  - All settlement demands or offers
  - The likelihood of success in the trial and on appeal
- **Fiscal Year Reporting.** By July 31<sup>st</sup> of each calendar year, GLWA's General Counsel shall provide a list of settlements of GLWA Actions and settlement allocations of DWSD Actions in the prior fiscal year to the Board.
- The Legal Committee shall review the legal invoices of all external attorneys representing GLWA in Actions.

### **POLICY TERM**

This Settlement Policy shall be effective upon approval of a majority of the Board. This Settlement Policy may be amended by the Board, by resolution, at any time. However, this Settlement Policy shall be reviewed and re-authorized by the Board on or before the last Board meeting in December 2020.