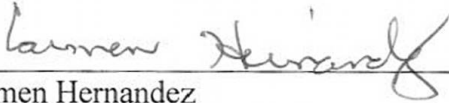


GOVERNING BOARD POLICY

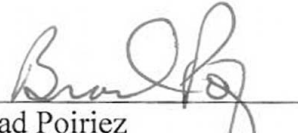
Mojave Desert Air Quality Management District

Policy No: 06-02

Amended: August 24, 2020



Carmen Hernandez
Governing Board Vice Chair



Brad Poiriez
Executive Director/APCO

SUBJECT: Authority of District Counsel

POLICY:

The Governing Board of the Mojave Desert Air Quality Management District (District) is required by statute to appoint legal counsel (Health & Safety Code §41626). The Governing Board appoints a District Counsel to satisfy this requirement. It is the policy of the Governing Board of the District to clearly define and indicate the authority of the District Counsel.

AMPLIFICATION OF POLICY:

District Counsel services may be obtained directly by Governing Board action, or by directing the APCO, by either hiring and retaining an employee meeting the requirements of the specific class or by obtaining legal services pursuant to contract. Regardless of the method of obtaining legal services the Governing Board is required by statute to act to appoint a person or law firm to serve as District Counsel

A. General

1. The District Counsel generally serves as the legal advisor to the Governing Board, the Executive Director/Air Pollution Control Officer (APCO), District Management and any Boards, Commissions and Committees of the District.
2. The Governing Board can retain counsel or special counsel for enumerated purposes or direct the APCO to do so for them. When retained, the counsel or special counsel will serve in the legal capacity as enumerated or directed by the Governing Board.
3. The District Counsel shall report to the APCO unless the Governing Board specifically requests or requires action on the part of District Counsel, in which

case the District Counsel shall report to the Chair of the Governing Board for the duration and scope of the action requested.

4. The District Counsel is the legal advisor to the District's executive management team.
5. Appropriate resources will be provided and appropriate safeguards shall be implemented to ensure that reasonable precautions are taken to obtain and maintain attorney/client privilege; attorney work product privilege and other applicable privileges and/or evidentiary exemptions from disclosure.

B. Formal Written Opinions

1. Formal written opinions are maintained and provide a precedent and legal basis upon which District decisions should be based.
2. Formal written opinions may be provided by special counsel regarding the particular purposes for which the special counsel is retained.
3. Governing Board members and the APCO are authorized to request formal written opinions. Governing Board members shall make their requests through the Chair of the Governing Board. Other District staff members shall make their requests through the APCO.

C. Incurring, Review and Payment of Costs.

1. The District Counsel may incur costs on behalf of the District to the extent authorized by law and Governing Board Policy 95-3.
2. The District Counsel is authorized to review and approve claims and requests for reimbursement incurred by Governing Board Members, Hearing Board Members, Members of the Technical Advisory Committee, and the APCO. Such claims and requests for reimbursement shall be reviewed and approved in accordance with current District policy, practice and procedure.
3. The District Counsel is authorized to review and approve bills, invoices or other statements of costs for services performed by outside legal counsel. Such review shall be conducted in consultation with the APCO and in conjunction with any other review required by current District policy, practice and procedure regarding the payment of costs.
 - a. Legal services can be one of the most expensive forms of services. The review by District Counsel is intended to ensure a thorough and proper review of costs for legal services and to allow for recommendations to be made to keep the cost of such services in proportion with the nature of the particular task to be performed.

- b. Notwithstanding the authorization granted in paragraph 3 above, the Governing Board upon its own motion may authorize payment for any legal services performed by outside counsel retained by the District.

D. Litigation Authority

1. District Counsel is authorized to act on behalf of the Governing Board to direct and control the prosecution and defense of all litigation to which the District is a party unless the Governing Board has retained special counsel for the particular purpose of conducting specific litigation on behalf of the Governing Board or the District.
 - a. Health & Safety Code §40701(b) provides the District has the power to sue and be sued in its own name in all actions and proceedings in all courts and tribunals of competent jurisdiction. Control of such litigation generally rests with the Governing Board.
 - b. In litigation it is many times necessary to complete legal procedures at a time when the Governing Board is not in session.
 - c. District Counsel, or special counsel if retained for specific litigation, is authorized to prosecute, defend, or arbitrate, any litigation provided, however, that such matters shall be brought to the Governing Board's attention as soon as practicable and that the Governing Board shall be kept advised of the status of such litigation. Any settlement or compromise of litigation is subject to the ratification of the Governing Board.
2. When retaining special counsel for the particular purpose of conducting specific litigation on behalf of the Governing Board, District Counsel shall advise the Board regarding appropriate counsel taking into account items such as cost, quality and relationship to the matter in question.
3. Litigation commenced pursuant to the statutory authority of the APCO to observe and enforce air pollution control laws (Health & Safety Code §40752) and the prosecutorial authority of the District Counsel (Health & Safety Code §42403(a)) is not subject to the provisions of paragraph D.1., above.

Revision History:

Adopted: August 28, 2006
Last review: October 23, 2017
Revised: September 24, 2018