



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
10

Meeting Date: **FEBRUARY 9, 2012**

Subject:

Authorize the Rejection of the Claim of Jacob Mojadam and All Others Similarly Situated.

Recommendation:

Adopt Resolution No. 2012-0014, authorizing the Rejection of the Claim of Jacob Mojadam and All Others Similarly Situated.

Background/Justification:

On January 18, 2012, Jacob Mojadam and All Others Similarly Situated ("Mojadam *et al.*") filed a claim (Attachment A) with the Authority alleging that on or about July 1, 2010, he and certain unidentified persons similarly situated suffered damages arising from the imposition of allegedly illegal taxicab trip fees by the Authority on taxicabs at San Diego International Airport ("Airport"). The amount of the claim is for a sum in excess of \$1,000,000.

Mojadam *et al.* allege in this claim that on or about July 1, 2010, the Authority wrongfully imposed a taxicab trip fee structure at the Airport to be effective commencing August 2, 2010. The claim seeks to stop future collection of the trip fees and a refund of all fees collected.

It is recommended that the claim should be denied. A review of the facts and actions taken by the Board and Authority staff reflect that the taxicab trip fee was legally adopted both procedurally and substantively at a rate using a cost recovery methodology which the Authority is permitted to impose upon all airport users, including taxicab operators, under state and federal law, the California Constitution, and the Authority's own code.

First, the records of the Authority reflect that the Board's actions with regard to the imposition of the taxicab trip fee were properly noticed and taken by Board resolution during a public meeting held in accordance with the Ralph M. Brown Act.

Second, the Authority acting through its Board has plenary power to operate, regulate, oversee, and charge for the use of the Airport, including but not limited to the exercise of powers: (1) to govern the Authority [Cal. Pub. Util. Code §170013]; (2) to adopt and enforce rules and regulations for the administration, maintenance, operation, and use of its facilities and service [Cal. Pub. Util. Code §170013]; (3) to "assume all revenue

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stream revenues to fund its activities, operations, and investments consistent with its purposes". . . [which] . . . may include, but are not limited to, imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness, and other expenditures consistent with the purposes of the authority". [Cal. Pub. Util. Code §170064(b)]; (4) "to maximize the revenues generated from enterprises located on the property of the authority". [Cal. Pub. Util. Code §170064 (c)]; (5) "hold, enjoy, lease, . . . real and personal property within or outside its area of jurisdiction in order to further its purposes". [Cal. Pub. Util. Code §170038]; and (6) to "study, plan, and implement any improvements, expansion, or enhancements" at the Airport". [Cal. Pub. Util. Code §170064 (c)].

Third, Cal. Gov. Code §50474 grants broad powers to local agencies operating airports to regulate ground transportation as follows:

"In connection with the erection, improvement, expansion, or maintenance of such airports or facilities, a local agency may:

(a) Regulate the receipt, deposit, and removal, and the embarkation or debarkation of passengers or property to and from such landing places or moorage.

(b) *Exact charges, fees, and tolls, and enforce liens for their payment.*

(c) Lease or assign for operation any space and any necessary or useful appurtenances, appliances, or other conveniences . . . [Portions omitted.] . . .

(f) *Regulate the use of the airport and facilities and other property or means of transportation within or over the airport.* [Portions omitted]"

Fourth, the taxicab trip fee is a cost-based user fee imposed by the Authority to recover the costs and expenses incurred by the Authority in providing its facilities and assets to taxicabs, taxicab drivers, and in the regulating and permitting of taxicabs and their activities at the Airport.

Fifth, *cost-based* user fees are expressly exempt from the prohibition on illegal taxes and fees as found in the California Constitution.

Sixth, the Authority under federal law and applicable federal grant assurances is legally obligated to "maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."

Fiscal Impact:

Not Applicable

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Environmental Review:

- A. California Environmental Quality Act: This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. The Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

SUZIE JOHNSON
PARALEGAL, OFFICE OF GENERAL COUNSEL



SDCRAA

JAN 18 2012

Corporate Services

San Diego County Regional Airport Authority

Document No. CL-159Filed 1/18/12

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Garcia, J. [unclear]

December 23, 2011

VIA PERSONAL DELIVERY 1-11-12

San Diego County Regional Airport Authority
 3225 North Harbor Drive, Third Floor
 Commuter Terminal
 San Diego, CA 92101

Dear SDCRAA and its board:

This is an administrative claim on behalf of Taxi driver Jacob Mojadam and all others similarly situated regarding the payment of trip fees to SDCRAA. We believe the fees are unfair, illegal and unconstitutional and the collection of the fees should immediately stop. We also ask, on behalf of claimant and all others similarly situated, for a refund of all such fees collected to date. This is not a limited civil case. We know of no specific tax refund procedure applicable to obviate a class action. Please consider this a Public Record Act request for it if there is one. We are informed that the fees in issue exceed \$1,000,000 and are ongoing. We are also informed that by 2014, the fees will exceed \$2,600,000 per year and when added to the sums for previous years, the total may exceed \$6,000,000 by the end of fiscal year 2014.

The address of Mr. Mojadam is 7857 Rancho Fanito Drive, Apt. E, Santee, CA 92071. All notices should be sent to this office. Please note the suite number for this office will change on January 15th to suite 1700. The description of the claim is as follows:

On or about July 1, 2010, the taxi trip fees were improperly enacted, improperly voted on, and constituted a violation of MTS codes. It appears certain that the board did not know that when voting that day. When SDCRAA was forced to admit the illegality of the fees as enacted, the fees, without a board vote, were unfairly, illegally and unconstitutionally placed on the incomes of taxi drivers, including claimant Mojadam. This resulted in an unlawful enactment of a fee, tax or not, and also a tax under the California Constitution on airport cab drivers who pick up a passenger at the airport. The SDCRAA has no authority to tax under any circumstances under its legislative charter and even if it did, the "fee" was by its very nature a tax because it did not comply with the requirements of, inter alia, the California Constitution as to what constitutes a tax. Among the requirements of the California Constitution is a public vote on any levy or exaction of monies from California Citizens.

The California Constitution also mandates proof by the governmental entity, by a preponderance of evidence, that the fee is not a tax. The trip fee in issue should have, morally, ethically and legally been voted on by the SDCRAA board after the board learned of the MTS code violations and prohibitions against the trip fee as enacted. Instead, the board, rather than voting on the driver-pay trip fee as legally required, allowed the trip



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fee to be placed on claimant Mojadam and others similarly situated by a decision of Thalia Bowens in September of 2010. The SDCRAA and board members have also refused to place the issue before the board for a vote as to the board's intentions on July 1, 2010. The chairman has refused to place that issue before the board, despite requests from some board members to do so, as required by fairness, reasonableness and good faith toward taxi drivers and also as required by the SDCRAA ethics code obligations.

In addition, the SDCRAA had in place, not fully disclosed to the board as of July 1, 2010, a contractual obligation to all taxi permit holders to bill the permit holders on a monthly basis for any taxi trip fees. Instead, in breach of the contracts with the taxi permit holders, and in violation of the SDCRAA duties to fully inform the board members as to all necessary information before a board vote, SDCRAA began collecting the trip fees from taxi drivers waiting in line by the sale of SDCRAA coupons. The board was, we believe, not fully informed of the illegality or at least uncertainty of the vote taken on July 1, 2010, as to the MST codes and statutes as they pertained to the motion voted on that day. It further appears that the SDCRAA and its house counsel either intentionally or inadvertently failed to fully inform the board of the MTS statutes. Had the true facts been known, particularly the prohibition against asking the taxi passenger to pay the trip fee, we believe the honorable men and women of the board, acting morally, ethically, fairly and legally as required, would have not have intentionally required the claimant Jacob Mojadam and others similarly situated to pay the trip "fees" from their meager earnings. The numerous public comments on the issue by board members support this conclusion. The representative of some of the cab drivers was also misled, consenting to the July 1, 2010, vote "as long as it is not placed on the cab drivers".

In addition, the cab drivers involved, believing as of July 1, 2010, that the "fee" was going to be placed on taxi passengers, received no notice or opportunity to be heard that the fee was going to be switched to drivers after the illegality of the fees on passengers surfaced. They were constitutionally required to have that notice and opportunity. Instead, the SDCRAA and board turned a deaf ear to the drivers protests and, in the publicly stated words of house counsel Lobner, the fee collected from drivers is proper because "That [the fee from taxi drivers' incomes] is what the board wants." We have been unable to find a public record of that conclusion by the board. If there is one, please consider this a public record request for that document.

It cannot be overlooked that the decision to transfer the trip fees from passengers, when the passenger fee was determined to be illegal, was based on "budgetary and bonding consequences" as stated by the CEO of SDCRAA. She knew the fees were being used to bolster the SDCRAA balance sheet to support the airport's marketing of \$600,000,000 in municipal bonds. It appears that to avoid the disruption or delay of the bond sale and/or the notification to all, especially the bond purchasers and bond rating agencies, of the change in SDCRAA finances if the \$2,600,000 in income from taxis were abandoned, the decision was made without a board vote. No notification or opportunity to be heard, as stated above, was given.

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Another aspect of the issues involved relate to the statements from Ms. Frasca, the New York municipal bond consultant hired by SDCRAA to assist in the marketing of the bonds. She noted the financial picture of SDCRAA was possibly inaccurate when considering the true picture of the ground transportation income outlined as part of the bond issuance financial data. This was communicated to SDCRAA and no record of any correction of the data is known to us. This is another indication of financial irregularities if SDCRAA did in fact allow taxi trip fees to be used or misused or enacted because of "bonding consequences". Stated another way, it seems possible that the taxi drivers were the victims of an overwhelming SDCRAA desire to save money on the interest rate on the bonds, regardless of the effect on the taxi drivers and their finances.

Driving a cab is dangerous work, involving heavy luggage lifting and exposure to murder and robbery and requiring long hours to make a basic living. As you know, robberies and a murder of a cab driver have occurred this year. Most drivers are immigrants who are willing to take such risks for such wages. Placing a \$2,600,000 per year "tax" on their income as their "fair share" of airport overhead is immoral, unethical, unfair and unconstitutional. That annual sum also bears no reasonable relationship to any fair allocation to others using the airport, in that others pay, if anything, only a small fraction of the sum assessed against taxi drivers. "Unfairness" to taxi drivers, standing alone, in light of the airport code's ethical duties of fairness to those working at the airport, is sufficient to call for a board vote to end this unjust tax.

There is no valid basis for taxi drivers to be singled out for trip fees or such a disproportional burden of fees or any trip fee at all. Although at one time targeted with a trip fee scheme, the parking lot shuttles and rental car shuttles and Cloud nine-type shuttles, limousines and other airport users escaped the onerous trip fees altogether and most importantly, the drivers of those vehicles are not assessed anything.

This claim does not need litigation and none will be required if SDCRAA and the board calls for, and votes for, the ethical, moral and fair resolution of this matter. The board members have moral and constitutional duties to the citizens and to those working at the airport. Those duties also include duties to all citizens to prevent such money grubbing conduct by airport management. The board has been sold a bill of goods by staff consisting of phony excuses such as "we need the money to build the additions", "they do it in Houston" and "it is only a fair share of the airport overhead being assessed against cab drivers". No, it isn't. It is grossly unfair. If any of the forgoing facts are inaccurate, please so advise. Particularly important would be providing any document which reflects the board's intent to have drivers pay the trip fee out of their incomes. Equally important would be any document that reflects a good faith reason for making cab drivers pay 90+% of the ground transportation overhead of the airport as their "fair share".

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To the board members: You will no doubt be asked, perhaps pressured, to “go along” with the desires of the SDCRAA staff on these issues. Please keep in mind that you have a fiduciary and ethical duty to do that which is right and which represents fairness and good faith toward the cab drivers. You are the only buffer between SDCRAA and the citizens of this county. Indeed, this is the only reason for the board’s existence.

Very truly yours,

CADENA CHURCHILL, LLP

Gordon S. Churchill, Esq.

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CADENA CHURCHILL LLP

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JAN 11 2012
General Counsel

December 23, 2011

VIA PERSONAL DELIVERY 1-11-12
San Diego County Regional Airport Authority
3225 North Harbor Drive, Third Floor
Commuter Terminal
San Diego, CA 92101

To the San Diego Regional Airport Authority and each member of the board and also each member of the board as of July 1, 2010:

The enclosed claim of Jacob Mojadam, on behalf of himself and all others similarly situated, is respectfully submitted for your attention.

As you know well, passage of Proposition 26 last year dramatically changed the landscape for governmental entities. When the trip fees were suggested in 2009, anyone challenging a fee as a tax or challenging a tax as an improperly allocated user fee or improperly calculated user fee had to prove the case. Now, with the burden of proof on the governmental entity, you must prove the fee is not a tax and prove that the fee was fairly allocated and fairly apportioned among other payors. In addition, the way this fee was allegedly "passed" by board vote and by transfer of the fee from taxi passengers to taxi drivers, two months later, without a board vote will not stand judicial scrutiny. The legal hopes and theories of SDCRAA in 2009 were dashed last year by the Prop. 26 change in the law.

I refer to the consultant's report of "maximizing revenue" as the primary basis for the likelihood this is an illegal tax under Propositions 218 and 26. I note here that multiple court decisions have universally ruled that a fee is an illegal tax if raising revenue was the primary purpose of the fee. There is substantial documentation on the purpose and intent of the fees involved and their relationship to the marketing of the bonds. Revenue was, is and always will be the reason for the entire "user fee" concept concocted back in 2009. SDCRAA now has the burden of proving, by a preponderance of evidence, that a fee is not a tax, was not imposed for raising revenue, was properly enacted by a board furnished with accurate information and was fairly allocated between the various airport ground transportation entities. As the claim mentions, the SDCRAA also has to prove the fee on drivers of taxis was somehow fairly assessed on them and not the other drivers of vehicles at the airport.

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I assume Mr. Lobner has provided you with the opinion of the San Diego City Attorney on the effect of Proposition 26 on this case. Mr. Lobner has tried and failed to convince Mr. Goldsmith his opinion is wrong. The Court of Appeal here in San Diego has ruled, in the *Weisblat* case, that close scrutiny will be placed on governments which try to pass taxes disguised as fees. *Weisblat* was decided before the passage of Proposition 26 last year, so SDCRAA faces an even steeper uphill slope in trying to convince the court, by a preponderance of evidence, of the merits of its legal positions.

The interests of all parties will best served by meeting with a retired judge mediator – you may propose one - to offer an independent view of this claim.

I look forward to hearing from you.

Very truly yours,

CADENA CHURCHILL, LLP

Gordon S. Churchill, Esq.

GSC:dm

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RESOLUTION NO. 2012-0014

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AUTHORIZING THE REJECTION OF THE CLAIM OF JACOB MOJADAM AND ALL OTHERS SIMILARLY SITUATED.

WHEREAS, on January 11, 2012, Jacob Mojadam and All Others Similarly Situated filed a claim with the San Diego County Regional Airport Authority for damages they allegedly incurred as a result of Taxicab Trip Fee implementation at San Diego International Airport; and

WHEREAS, at its regular meeting on February 9, 2012, the Board considered the claim filed by Jacob Mojadam and All Others Similarly Situated, the report submitted to the Board, and found that the claim should be rejected.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby AUTHORIZES the rejection of the claim of Jacob Mojadam and All Others Similarly Situated.

BE IT FURTHER RESOLVED that this Board action is not a "project" as defined by the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §21065; nor is it a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 9th day of February, 2012, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL