





April 22, 1997

To: Board of Directors (Legal and Claims Committee--Action)
(Organization and Personnel Committee--Action)

From: General Manager and 
General Counsel 

Subject: Authorization to Amend Agreement No. 4645 with the Law Firm of Morgan,
Lewis & Bockius Expanding the Scope of Services and Increasing the
Maximum Amount Payable

RECOMMENDATION(S)

It is recommended that the General Manager be authorized to amend Agreement No. 4645 with the law firm of Morgan, Lewis & Bockius to provide for an expanded scope of services to include litigation assistance relating to the Project Labor Agreement for the Eastside Reservoir Project and increase the maximum amount payable under the Agreement to \$440,000.

EXECUTIVE SUMMARY

The General Manager is proposing that Agreement No. 4645 with the law firm of Morgan, Lewis & Bockius, be amended by expanding the scope of services to permit the firm to assist the District with litigation now pending on the Project Labor Agreement for the Eastside Reservoir Project and increasing the maximum amount payable under the Agreement by \$100,000 to \$440,000 which will also provide funding for continuing legal services related to the Eastside Reservoir Project and the District's Owner Controlled Insurance Program.

DETAILED REPORT

The law firm of Morgan, Lewis & Bockius was originally retained in May of 1994, to assist with implementation of the Project Labor Agreement for the Eastside Reservoir Project. The firm, prior to its association with the District, had assisted in negotiating other project labor agreements and had successfully defended a public agency's use of such an agreement before the United States Supreme Court in the case of *Building & Construction Trades Council v. Associated Builders & Contractors*, commonly referred to as the *Boston Harbor* litigation. The firm, principally through the services of E. Carl Uehlein, Jr., has assisted the District both in the negotiation and drafting of the Project Labor Agreement for the Eastside Reservoir Project and in developing a program which allows the District to use provisions of California's Workers' Compensation Act permitting alternate dispute resolution and managed care procedures for employees working under a collective bargaining agreement at the reservoir construction site.

Most recently the firm has assisted Metropolitan in obtaining a favorable result in the *Associated Builders & Contractors, Inc. v. Metropolitan Water District of Southern California, et al. (ABC v. MWD)* litigation. The court denied ABC's petition seeking an order preventing Metropolitan from opening bids or awarding contracts on the P-1 Pumping Plant at Eastside Reservoir and requiring Metropolitan to delete the Project Labor Agreement requirements from the project specifications. That petition was denied with the court specifically finding that, "The PLA does not conflict or impinge on the lowest 'responsible' bidder law. Nor does it violate the competitive bid statute, the Right of Free Association, equal protection of the laws, or the Labor Code." ABC is currently appealing the court's decision. It is anticipated that the firm will assist the General Counsel and his staff in responding to the appeal.

The firm has also provided ongoing advice to the District on labor and collective bargaining issues as they have arisen at the Eastside Reservoir Project site. Mr. Uehlein has assisted the District in establishing arbitration proceedings under the project agreement and has provided advice to the District on several labor related matters that have arisen since work commenced at the site, including jurisdictional issues among various unions. Mr. Uehlein also assisted Metropolitan in obtaining a modification of the California court of appeals decision in *Associated Builders and Contractors v. Contra Costa Water District*, a case which could have seriously impaired the ability of public agencies to use project labor agreements.

The amended scope of services will provide for the firm's assistance with litigation in the appeal now pending in the matter of *ABC v. MWD* and for continuing advice on matters related to enforcement and interpretation of the Eastside Reservoir Project Labor Agreement. It is also anticipated that Mr. Uehlein will continue to act in an oversight capacity in disputes and arbitrations involving Project Labor Agreements which affect Metropolitan and also continue as a liaison between the District and the national labor organizations. The billing rates

for the individuals who may provide services under the amended agreement are attached to this letter. It is expected that the majority of the services under an amended agreement will be provided by Mr. Uehlein personally.

The original amount payable under Agreement No. 4645 was \$150,000. That amount was increased in December of 1994 to \$200,000, and was increased by \$100,000 to \$340,000 in August of 1996. The *ABC v. MWD* litigation resulted in higher billings than were originally budgeted for this agreement in 1996. In order to continue providing litigation assistance in the pending appeal of *ABC v. MWD* and continue providing labor relations advice related to the Eastside Reservoir Project Labor Agreement, the General Manager is proposing to amend the contract amount increasing the maximum amount payable under the Agreement by \$100,000 to \$440,000. It is anticipated that without additional unanticipated litigation expenses, the increase requested will provide adequate funding through 1998.

JCC:mg
Attachment
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ATTACHMENT

Morgan, Lewis & Bockius

Fee Schedule, Agreement No. 4645

E. Carl Uehlein, Jr. Andrew Peterson Partners	\$295/hour
David Marshall Senior Associate	\$235/hour
Scott B. Gilly Associate	\$185/hour
Derek B. Lipscombe Associate	\$165/hour
Tom Lyndhurst Associate	\$135/hour