



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-8

January 6, 1998

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

**From:** *for* General Manager Edward L. Mezzini

**Submitted by:** General Counsel W. Gregory Traylor

**Subject:** Authorization to Amend Agreement No. 4645 with the Law Firm of Morgan, Lewis & Bockius Increasing the Maximum Amount Payable and File *Amicus Curiae* Brief in Appeal Involving Constitutionality of California Labor Code Section 3201.5

**RECOMMENDATION(S)**

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It is recommended that the General Manager and General Counsel be authorized to:

- 1) Amend Agreement No. 4645 with the law firm of Morgan, Lewis & Bockius to amend the maximum amount payable under the Agreement to an amount not to exceed \$100,000 per twelve-month period; and
- 2) File an *amicus curiae* brief in the matter of *Costa v. WCAB, et al.* (Fourth Appellate District No. G022181), a case in which the constitutionality of the workers' compensation alternative dispute resolution provisions under California Labor Code section 3201.5 are being challenged.

**EXECUTIVE SUMMARY**

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The General Manager is proposing to amend Agreement No. 4645 with the law firm of Morgan, Lewis & Bockius, by amending the maximum amount payable under the Agreement to an amount not to exceed \$100,000 per twelve-month period to provide funding for continuing litigation assistance, including work on the *amicus curiae* brief in the matter of *Costa v. WCAB, et al.* as well as the appeal in the matter of *ABC v. MWD*, and continuing labor relations advice related to the Eastside Reservoir Project.

The General Counsel seeks authority to file an *amicus curiae* brief in the matter of *Costa v. WCAB, et al.*, a case in which the constitutionality of an alternative system for resolving disputes involving workers' compensation claims, as permitted under Labor Code section 3201.5, is being challenged. The case is of importance to Metropolitan because it has the potential to impact the alternative dispute resolution (ADR) programs established for the Eastside Reservoir and Inland Feeder Projects.

## **DETAILED REPORT**

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The law firm of Morgan, Lewis & Bockius was originally retained in May of 1994, to assist with negotiation and implementation of the Project Labor Agreement (PLA) for the Eastside Reservoir Project. The firm also assisted Metropolitan in developing an ADR and managed health care program and in responding to litigation related to the PLA.

The firm, principally through the services of E. Carl Uehlein, has also provided ongoing advice to the District on labor and collective bargaining issues as they have arisen at the 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.

Most recently the firm has assisted Metropolitan in obtaining a favorable result in the appeal of *Associated Builders & Contractors, Inc. v. Metropolitan Water District of Southern California, et al. (ABC v. MWD)*. The appellate court upheld Metropolitan's use of a PLA, finding that competitive bidding statutes were not violated and that workers' rights of free association were not impaired. Associated Builders & Contractors, Inc. has filed a Petition for Review with the California Supreme Court and it is anticipated that the firm will assist in preparing a response.

The firm has 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 and in preparing an *amicus* brief in the matter of *Associated Builders and Contractors v. San Francisco Airports Commission* an appellate case which also upheld a public agency's use of a Project Labor Agreement.

The original amount payable under Agreement No. 4645 was \$150,000. That amount was increased in December of 1994 to \$200,000, to \$340,000 in August of 1996, and to \$440,000 in April of 1997. In order to continue providing litigation assistance and labor relations advice related to the Eastside Reservoir Project Labor Agreement, the General Manager is proposing to amend the contract to provide for a maximum amount payable not to exceed \$100,000 per twelve-month period. During 1997, approximately \$78,000 of the firm's billings were litigation related including the trial and appeal of the *ABC v. MWD* action, the *amicus* brief in *ABC v. San Francisco Airports Commission* and assistance with some of the pending cases which have challenged the Eastside Reservoir workers' compensation ADR program. The remainder of the billings, averaging \$6,900 per month, were related to labor relations matters arising under the Eastside Reservoir PLA. It is anticipated that expenses on the *amicus* brief in *Costa v. WCAB*, if approved by the Board, will run between \$6,000 and \$7,000; expenses related to the *ABC v. MWD* litigation will vary depending on whether the California Supreme Court accepts the case for review but should be substantially less than in 1997. Labor relations advice and counsel provided by Mr. Uehlein should continue to average less than \$7,000 per month. The billing rates for the individuals who may provide services under the amended agreement are attached to this letter.

The pending appeal in *Costa v. WCAB* has the potential to adversely affect Metropolitan's workers' compensation alternative dispute resolution programs now in effect for both the Eastside Reservoir and Inland Feeder Projects. The case arises following an accident involving Tony Costa, injured in the an electrical explosion in the course of his work in July of 1996. Following his injury, Mr. Costa filed a claim with the WCAB instead of participating in the ADR process in effect at the time of his injury. Like Metropolitan's program, the program covering Mr. Costa required that his claim proceed through mediation and arbitration before proceeding to the WCAB. Mr. Costa alleges that all such ADR programs, although specifically authorized by California Labor Code section 3 201.5, violate provisions of California's constitution relating to workers' compensation. The Court of Appeal for the Fourth Appellate District has set argument in the case for April 16, 1998. It is anticipated that the firm of Morgan Lewis & Bockius will assist in the preparation of the brief. Because this case will be one of first impression for the courts and because of the potential to affect Metropolitan's programs it is requested that the General Counsel be authorized to file an *amicus* brief in the matter.

JCC:mg

Attachment

mibbl03.doc

## ATTACHMENT

Morgan, Lewis & Bockius

Fee Schedule, Agreement No. 4645

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