




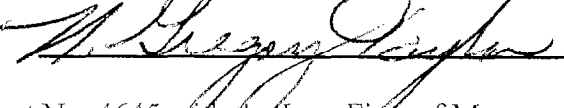
**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-7

August 14, 1998

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

**From:** General Manager   
General Counsel 

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

### RECOMMENDATION(S)

It is recommended that the General Manager and General Counsel be authorized to amend Agreement No. 4645 with the law firm of Morgan, Lewis & Bockius to increase the maximum amount payable under the Agreement by \$75,000 to an amount not to exceed \$175,000 per twelve-month period.

### EXECUTIVE SUMMARY

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 \$175,000 per twelve-month period to provide funding for continuing litigation in the matter of *ABC v. MWD*, and continuing labor relations advice related to the Eastside Reservoir Project.

### DETAILED REPORT

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 alternative dispute resolution (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.

The firm has assisted Metropolitan in obtaining favorable results in litigation challenging the use of project labor agreements by public agencies. Currently, *Associated Builders & Contractors, Inc. v. Metropolitan Water District of Southern California, et al. (ABC v. MWD)* is on appeal to the California Supreme Court where it is anticipated that the matter will be argued in the fall. Metropolitan prevailed at the trial and appellate levels where both courts upheld Metropolitan's use of project agreements, finding that competitive bidding statutes were not violated and that workers' rights of free association were not impaired. Interestingly, the Supreme Court accepted both the *ABC v. MWD* and the *ABC v. San Francisco Airports Commission*, a case which also upheld the right of a public agency to use a project labor agreement. Metropolitan has coordinated with counsel for the Airports Commission to assure that the briefs are complementary.

The firm also assisted Metropolitan in preparing an *amicus* brief in *Costa v. Workers Compensation Appeals Board (Costa v. WCAB)*, a case with 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. Mr. Costa alleged that all such ADR programs, although specifically authorized by California Labor Code section 3201.5, violated provisions of California's constitution relating to workers' compensation. Fortunately, the appellate court, in a recently published decision, upheld the constitutionality of Labor Code section 3201.5 finding that the legislature acted properly in establishing the alternative program.

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 February of 1998, the Board authorized an amendment to the agreement to providing for a maximum amount payable not to exceed \$100,000 per year. Because of the acceptance of the *ABC v. MWD* case by the Supreme Court and the necessary effort required to prepare the case, projected litigation expenses have been higher than projected. 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 \$175,000 per twelve-month period. During the last twelve months, approximately \$115,000 of the firm's billing was litigation related including the appeal of the *ABC v. MWD* action, the *amicus* briefs in *ABC v. San Francisco Airports Commission* and *Costa v. WCAB*, as well as other cases which have challenged the Eastside Reservoir workers' compensation ADR program. The remainder of the billings were related to labor relations matters arising under the Eastside Reservoir PLA. The current hourly rates for members of the firm providing services under the agreement are attached.

## ATTACHMENT

Morgan, Lewis & Bockius

Fee Schedule, Agreement No. 4645

Partners \$295/hour

E. Carl Uehlein, Jr.

Andrew Peterson

Associates \$130 - \$225/hour

Jonathan Rose

Tom Linthorst

Nicole Wynn