

- **Board of Directors**
Legal and Claims Committee

June 13, 2000 Board Meeting

8-7

Subject

Authority to amend Agreement No. 12856 with the appraisal firm of Mason & Mason for eminent domain litigation to acquire property for the Inland Feeder Project

Description

The Inland Feeder Project requires over 70 tunnel easements in the Badlands Hills area of San Bernardino and Riverside Counties. In 1997 the General Counsel retained the appraisal firm of Mason & Mason to perform a general study of the effect of deep tunnels on surface values. Staff believes it is the most comprehensive and reliable study of its kind available. In fact, several of Metropolitan's other outside counsel requested the appraisal services of Mason & Mason due to Mason & Mason's familiarity with the project and the firm's expertise in tunnel easements.

Metropolitan received the Board's approval on September 15, 1998 to amend Mason & Mason's agreement to perform eminent domain litigation appraisals for each tunnel parcel and to provide expert testimony on those parcels that go to trial. In March, 1999, the Board approved an amendment to Mason & Mason's contract to continue to provide appraisals and expert testimony. Mason & Mason has appraised about 20 tunnel easements. Each tunnel easement required \$10,000 to \$20,000 for all work short of trial. All tunnel appraisals are now complete. There are trial dates scheduled in the remaining four tunnel easement actions and Fran Mason of Mason & Mason has been designated as one of Metropolitan's experts in all four actions. During the course of the last year, several trials were repeatedly continued. As an example, in one matter (Ryan), the trial has been continued three times due to the illness of opposing counsel. Each time, costs for trial preparation were incurred. Therefore, the General Counsel recommends increasing the maximum payable to Mason & Mason, including expenses through trial of the four remaining actions. Mason & Mason's estimate for completion of exhibits, trial preparation and testimony is \$15,000 to \$20,000 per action. Therefore, the General Counsel recommends increasing by \$80,000 the maximum payable to Mason & Mason, including expenses, to an amount not to exceed \$680,000.

Policy

Administrative code section 6431

Board Options/Fiscal Impacts

Option #1

Increase contract with Mason & Mason

Fiscal Impact: \$80,000. Budgeted 1999/00

Option #2

Pay the parties their respective settlement demands. Without the expert testimony of an appraiser, the only value that a jury would hear is that of the plaintiff's experts.

Fiscal Impact: Unknown. Final settlement offers have not been made on all matters. However could be in excess of \$500,000.

Option #3

Hire alternative appraisers

Fiscal Impact: Again trials will be continued and Metropolitan would incur greater expense for learning curve of new appraisers.

Staff Recommendation

That the board authorize the general counsel to amend the contract with Mason & Mason to increase the maximum payable from \$600,000 to \$680,000, including expenses.


General Counsel

5/26/2000
Date