

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

September 11, 2001 Board Meeting

8-7

Subject

Approve amendment of contract for legal services with Weston, Benshoof, Rochefort, Rubalcava & MacCuish, LLP in Metropolitan Water District v. San Diego County Water Authority (Brown Act)

Description

Metropolitan filed the action entitled Metropolitan Water District v. San Diego County Water Authority (San Francisco Superior Court No. 321056) to obtain a judicial determination as to whether Metropolitan's Board could exclude the Water Authority's directors from closed sessions in which legal issues involved in San Diego County Water Authority v. Metropolitan, regarding preferential rights, were discussed. Metropolitan was successful in obtaining an Order and Preliminary Injunction, dated June 13, 2001, enjoining and prohibiting the Water Authority's directors from attending Metropolitan's closed sessions regarding the preferential rights litigation.

In view of the trial court's Order and Preliminary Injunction, the General Counsel does not anticipate significant additional action in this case. However, the individual Water Authority directors filed a cross-complaint against Metropolitan alleging that they are entitled to have their defense costs, including attorney's fees, paid by Metropolitan. If the individual Water Authority directors continue to pursue that claim, and their attorney has indicated an intent to pursue the claim, additional court proceedings will be required.

The General Counsel retained the firm of Weston, Benshoof, Rochefort, Rubalcava & MacCuish to assist Metropolitan in this litigation. The General Counsel's current contract with the firm limits the maximum compensation to \$100,000. Billings to date are approaching the contract maximum. In order to defend Metropolitan against the cross-complaint by the individual Water Authority directors for recovery of attorney's fees, additional funding is necessary. The Weston, Benshoof firm has submitted a litigation budget estimating billings through a possible trial on the merits on the injunction and the attorney's fees claim of \$75,000. Amending the current contract to increase the maximum amount payable to \$175,000 will cover the costs of resolving this issue should it become necessary to proceed with a trial on the merits.

Policy

Metropolitan Water District Administrative Code Section 6431 – Legal Contracts Over \$100,000

CEQA

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA), because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA per Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize amendment of the contract with Weston, Benshoof, Rochefort, Rubalcava & MacCuish, LLP to increase the maximum compensation from \$100,000 to \$175,000.

Fiscal Impact: Increased litigation costs for outside counsel.

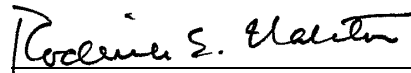
Option #2

Do not authorize the amendment of the contract with Weston, Benshoof, Rochefort, Rubalcava & MacCuish.

Fiscal Impact: Unknown

Staff Recommendation

Option #1



Roderick E. Walston
General Counsel

8/27/2001

Date