

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

April 9, 2002 Board Meeting

8-4

Subject

Amend contract for legal services with McCutchen, Doyle, Brown & Enerson, LLP in *San Diego County Water Authority v. Metropolitan Water District, et al.*, San Francisco Superior Court Case No. 320217 (Preferential Rights), to increase maximum amount payable by \$125,000

Description

As previously reported to the Board, San Francisco Superior Court Judge James J. McBride sustained Metropolitan's demurrer to the San Diego County Water Authority's First Amended Complaint in *San Diego County Water Authority v. Metropolitan Water District, et al.* without leave to amend on February 26, 2002. Sustaining the demurrer without leave to amend essentially ends the Water Authority's challenge to Metropolitan's administration of the preferential rights requirement (Section 135 of The Metropolitan Water District Act) at the Superior Court level. However, the Water Authority Board has authorized its staff to appeal the trial court's decision. In order to preserve the successful result in the Superior Court, Metropolitan must oppose the appeal.

To assist Metropolitan in litigating this matter, the General Counsel retained the law firm of McCutchen, Doyle, Brown & Enerson. The Board approved a contract with the firm for a maximum of \$250,000 for estimated costs of pre-trial proceedings in August 2001. David M. Heilbron, the main partner handling the action, is a highly experienced litigator and a past president of the California Bar Association.

McCutchen, Doyle's billings in this action have not yet reached the maximum contract amount. However, the additional work involved in preparing briefs for and orally arguing the appeal will exceed the current maximum. We estimate that the cost for defending the trial court's favorable ruling in this case through a final decision by the Court of Appeals will be approximately \$125,000. This would require increasing the current maximum of \$250,000 to \$375,000.

Policy

Metropolitan Water District Act, § 135: Preferential Rights; Metropolitan Administrative Code § 6430: General Counsel authorized to represent Metropolitan in legal proceedings.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under 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 that may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination for Option #1 is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

Not required.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize amendment of the contract with McCutchen, Doyle, Brown & Enerson to increase the maximum compensation from \$250,000 to \$375,000.

Fiscal Impact: Additional litigation costs for outside counsel.

Option #2

Do not authorize amendment of the contract with McCutchen, Doyle, Brown & Enerson.

Fiscal Impact: Unknown

Staff Recommendation

Option #1

for 
Jeffrey Kightlinger
General Counsel

3/15/2002
Date

BLA #1667