

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

September 10, 2002 Board Meeting

8-8

Subject

Approve amendment to contract for legal services with Harkins Cunningham by \$500,000 and report on Colorado River negotiations [Conference with real property negotiators; property is Colorado River water rights; agency negotiators: Dennis Underwood and Jeffrey Kightlinger; negotiating parties: U.S. Department of the Interior, State of California, Imperial Irrigation District, Coachella Valley Water District and San Diego County Water Authority; under negotiation: price and terms of agreement; to be heard in closed session pursuant to Gov. Code § 54956.8]

Description

A contract with Harkins Cunningham, and specifically for the personal services of Paul Cunningham, has been in effect since November 1998 for discussion, negotiation and documentation of the Quantification Settlement Agreement (QSA) and other documents relating to the California 4.4 Plan. It was anticipated that this process would have been completed by January 2001, but the process continues and negotiations and modifications of draft documents may be required prior to execution of the QSA. Metropolitan's staff, attorneys, and outside counsel continue to exert extensive effort towards completing the negotiations and agreements. The services of Harkins Cunningham have in the past been and continue to be needed to provide the necessary continuity of representation and support until this process is completed. The legal department has budgeted for this effort in this year's board-approved budget. Because the contract funds previously authorized have been exhausted, it is necessary to amend the contract with Harkins Cunningham at this time.

The amended contract will continue with the same terms and conditions as presently included in the contract with the only amendment being to increase the maximum payable by \$500,000 to a total of \$2.1 million. Mr. Cunningham's services are presently billed at \$350.00 per hour.

Policy

Prior board direction to successfully complete the Quantification Settlement Agreement and the accompanying legal agreements.

Metropolitan Water District Administrative Code § 6431: Authority to Obtain Expert

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action, i.e., amending contracts for legal services relating to the Colorado River/QSA negotiations, 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 other 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 the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the amendment of the contract with the law firm of Harkins Cunningham to increase the maximum compensation by \$500,000 to complete negotiations of the QSA and related documents for the California 4.4 Plan.

Fiscal Impact: Maximum of an additional \$500,000

Option #2

Terminate contract with Harkins Cunningham and complete negotiations with respect to QSA issues utilizing staff only.

Fiscal Impact: Unquantifiable impacts from loss of key negotiator with significant expertise; staff time considerations.

Staff Recommendation

Option #1



Jeffrey Knightlinger
General Counsel

8/15/2002

Date