

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

March 11, 2003 Board Meeting

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8-3

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**Subject**

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Approve amendment to increase by \$300,000 the contract for legal services with Harkins Cunningham 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]**

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**Description**

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A contract with Harkins Cunningham, specifically for the services of Paul Cunningham and Carl Kaseman, has been in effect since November 1998 to assist with the negotiation and documentation of the Quantification Settlement Agreement (QSA) and other documents relating to the California Colorado River Water Use Plan. Because the contract funds previously authorized have been exhausted, it is necessary to amend the contract with Harkins Cunningham.

It was anticipated that the QSA would be executed by December 31, 2002, but the negotiations continue in Sacramento at the Governor's request. If an agreement is reached, Metropolitan's legal staff and outside counsel will be required to complete the revised agreements. The continued services of Harkins Cunningham will be needed to provide the necessary representation and support until the completion of the QSA process. Metropolitan's legal staff has budgeted for this effort in the 2002/03 fiscal year budget and will budget for continued efforts to its next year's fiscal plan.

Mr. Cunningham's services are presently billed at \$400 per hour. This amendment will increase the maximum payable by \$300,000 to a total of \$2.4 million. Nearly \$2.1 million have been expended over the last four years on this contract.

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**Policy**

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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

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**California Environmental Quality Act (CEQA)**

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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**

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**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 payable by \$300,000 to complete negotiations on the QSA and related documents for the California Colorado River Water Use Plan.

**Fiscal Impact:** Maximum of an additional \$300,000 in budgeted funds.

**Option #2**

Terminate contract with Harkins Cunningham and complete QSA negotiations and documents utilizing staff only.

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

**Staff Recommendation**

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Option #1

  
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Jeffrey Kightlinger  
General Counsel

2/14/2003  
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Date