

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

August 19, 2003 Board Meeting

8-11

Subject

Approve amendment to increase professional services contract with the law firm of Muys & Associates in the amount of \$100,000 for legal services in *Arizona v. California*, No. 8 Original (U. S. Sup. Ct.).

Description

Jerome Muys, of Muys & Associates, has been representing Metropolitan in the *Arizona v. California* litigation for many years. Staff counsel has worked very closely with Mr. Muys in the current phase of the *Arizona v. California* litigation, which concerns the Quechan Tribe's claim of reserved water rights. Special Master McGarr has divided the *Arizona v. California* proceeding into two phases. In the first or "title" phase, the Special Master will decide whether the Quechan Tribe holds title to certain "mesa" lands (which would entitle such lands to a reserved water right), or whether such "mesa" lands were ceded by the Tribe back to the United States (which would mean that no reserved water right attaches to such land). If the Special Master finds that the "mesa" lands are held by the Tribe and were not ceded, the Special Master will decide in the second or "practicably irrigable acreage" phase, the specific magnitude and priority of any reserved water right for such lands.

Summary judgment motions were recently filed by the California parties, including Metropolitan, in the first phase of the litigation. Further briefing and oral argument in this title phase will occur this fall. Staff counsel has collaborated with Mr. Muys in preparing pleadings in the case, and has taken the lead in depositions and discovery to reduce the costs of the litigation.

If California is limited to a 4.4 million acre-foot apportionment, Metropolitan could face exposure if the Tribe succeeds in establishing a reserved water right for the mesa lands. Although the Tribe and the United States have not disclosed at this stage of the litigation the exact magnitude of the reserved water right being sought, the mesa lands consist of roughly 25,000 acres. Therefore, Metropolitan has an important interest at stake in the litigation.

The proposed amendment would augment Muys & Associates' contract by \$100,000 for calendar year 2003, to a maximum amount of \$200,000 for the calendar year. Mr. Muys' current hourly billing rate is \$300.

Policy

Metropolitan Water District Administrative Code § 6431: Employment of Special Counsel.

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 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 approve amendment to increase professional services contract with the law firm of Muys & Associates by \$100,000 for calendar year 2003.

Fiscal Impact: \$100,000

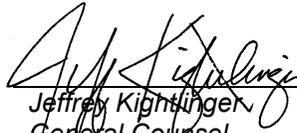
Option #2

Do not approve amendment to professional services contract, and require all legal services involving the proceedings to be provided exclusively by the Legal Department.

Fiscal Impact: Unknown

Staff Recommendation

Option #1


Jeffrey Kightlinger
General Counsel

7/23/2003
Date