

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

September 13, 2005 Board Meeting

7-4

Subject

Authorize increase of \$140,000 in maximum amount payable under contract with Davis Wright Tremaine LLP for legal services related to FERC relicensing of the Oroville Facilities

Description

As previously reported to the Board, the Department of Water Resources (DWR) is seeking renewal of its Federal Energy Regulatory Commission (FERC) license for the State Water Project (SWP) Oroville Facilities. This renewal is being pursued under the auspices of FERC's Alternative Licensing Procedure (ALP), which is designed to assist DWR and various stakeholders in reaching consensus on what terms and conditions should be included in the new license. Any such consensus would be memorialized in a written settlement agreement submitted to FERC for its review and approval.

Metropolitan contracts for nearly one-half the water supplied by the SWP and, as such, pays a significant amount of project costs. Metropolitan therefore has a vested interest in ensuring that any costs incurred in obtaining and implementing the new FERC license are both necessary and appropriate. To that end, Metropolitan staff have been actively engaged in all aspects of the ALP process, including actual settlement negotiations, which began in earnest in May 2005.

Progress has been and is being made toward reaching agreement on various license terms and conditions, including ones related to recreation, land use, cultural resources and local benefits. Nonetheless, significant disagreements persist among the various stakeholders with respect to other license terms and conditions, including those that address fisheries issues. As a result, while DWR originally had hoped to have settlement negotiations completed by July, it now appears that negotiations could continue well into next year.

In January 2005, Metropolitan retained Davis Wright Tremaine LLP to provide legal counseling and assistance related to the FERC relicensing of the Oroville Facilities. Davis Wright Tremaine is a national law firm with significant experience and expertise in relicensing of hydroelectric facilities, in general, and in dealing with fisheries issues, in particular. Davis Wright Tremaine was retained pursuant to the General Counsel's general authority to obtain expert assistance in amounts not exceeding \$100,000. However, it now appears that Davis Wright Tremaine's fees and costs will exceed this limit.

As of July 13, 2005, Davis Wright Tremaine's costs and fees totaled \$62,337.84. It has been estimated that an additional \$150,000 to \$170,000 in fees and costs could be incurred through the end of the settlement negotiation process. This estimate is based upon Davis Wright Tremaine's average billings for the past seven months and assumes the same level of effort through the end of calendar year 2006.

The actual amounts billed by Davis Wright Tremaine will depend on the pace and complexity of the ongoing settlement negotiations, and whether and to what extent a settlement agreement can be reached with key stakeholders, such as the federal and state regulatory agencies. If a settlement agreement cannot be reached and administrative or legal action is pursued, then Davis Wright Tremaine's fees and costs could go significantly higher. Nonetheless, at this time, the above figures appear to be a reasonable estimate of Davis Wright Tremaine's future fees and costs. Accordingly, authority is requested to increase the maximum amount payable under the Davis Wright Tremaine contract from \$100,000 to \$240,000.

Policy

Metropolitan Water District Administrative Code Section 6431: Authority to Obtain Expert Assistance

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action, i.e., amending a contract for legal services related to the FERC relicensing of the Oroville Facilities, 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 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 of contract for legal services with Davis Wright Tremaine to increase maximum amount payable from \$100,000 to \$240,000.

Fiscal Impact: Up to \$140,000 in current and future invoices

Option #2

Do not amend subject contracts.

Fiscal Impact: Unknown at this time

Staff Recommendation

Option #1


Jeffrey Kightlinger
General Counsel

8/23/2005
Date