

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

June 13, 2006 Board Meeting

8-8

Subject

Authorize amending contract for legal services with Cox, Castle & Nicholson to increase compensation by \$100,000 [**Conference with legal counsel - existing litigation (*Metropolitan Water District of Southern California s. Campus Crusade for Christ*, SBSC Case No. SCV 35498, Supreme Court Case No. S141148); to be heard in closed session pursuant to Gov. Code Section 54956.9(a)**]

Description

The above eminent domain action was tried in April 2003 and a favorable ruling was obtained in the San Bernardino Superior Court. Metropolitan's final offer of settlement before trial was \$3.5 million and Campus Crusade for Christ's (CCC) final demand was for approximately \$8 million. The Court awarded CCC the sum of \$473,278.45 for the parcels taken, plus interest. CCC appealed the ruling. The appeal process has extended for two and a half years, three changes of CCC counsel, several settlement conferences, and extensive briefing.

On December 19, 2005 the Court of Appeal issued its opinion reversing the trial court's judgment and remanding the matter for a new trial. On February 14, 2006 Metropolitan filed its petition for review to the State Supreme Court. CCC filed its opposition on March 6, 2006 and Metropolitan filed its reply to the opposition on March 16, 2006. Metropolitan obtained amicus support from a number of member and state agencies as well as ACWA, the League of California Cities, California State Association of Counties and CalTrans. On April 19, 2006 the State Supreme Court unanimously granted Metropolitan's petition for review.

Metropolitan's opening brief was filed May 19, 2006, CCC's opposition brief is due July 17 and Metropolitan's reply to CCC's opposition will be due around August 6, 2006.

In January 2006 the General Counsel obtained authority to increase Cox, Castle & Nicholson's contract by \$75,000 which the General Counsel and outside counsel anticipated would be sufficient for completion of the appellate work through the filing of a petition for review. Now that the petition for review has been granted it is anticipated that an additional \$100,000 will be needed for all work to be done on the brief on the merits, the reply brief, preparation for oral argument, oral argument and response to the decision. Therefore, it is necessary to amend the agreement with Metropolitan's outside counsel Cox, Castle & Nicholson by \$100,000 to a maximum of \$350,000 for completion of the appellate work.

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 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 Cox, Castle & Nicholson to increase the maximum payable by \$100,000 to \$350,000.

Fiscal Impact: This action will result in an additional \$100,000 in increased contract authority.

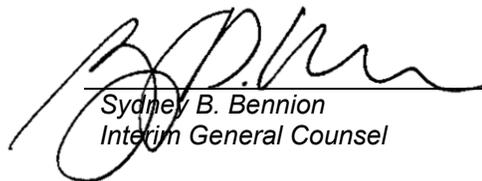
Option #2

Do not increase the authorization which would significantly impair Metropolitan's ability to achieve a favorable result in the California Supreme Court.

Fiscal Impact: Unknown

Staff Recommendation

Option #1



Sydney B. Bennion
Interim General Counsel

5/19/2006
Date

BLA #4511