

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

September 12, 2006 Board Meeting

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7-5

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**Subject**

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Authorize increase of \$160,000 (to a maximum of \$400,000) under contract with Davis Wright Tremaine LLP for legal services related to FERC relicensing of the Oroville Facilities

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**Description**

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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 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.

Metropolitan contracts for nearly one-half the water supplied by the SWP and pays a significant amount of project costs. Metropolitan therefore has a strong interest in ensuring that any costs incurred in obtaining and implementing the new FERC license are 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. These efforts culminated in the execution of a proposed Settlement Agreement on March 21, 2006, by over 50 stakeholders, including Metropolitan and the State Water Contractors, Inc. (SWCs).

Although the Settlement Agreement enjoys widespread support, Butte County and certain other parties maintain that it does not fully address their concerns and are seeking to have FERC impose additional license terms and conditions. Metropolitan and the SWCs believe that the Settlement Agreement fairly and adequately addresses the competing demands of various stakeholders. Accordingly, Metropolitan and the SWCs have formally intervened in the FERC relicensing proceeding and are working closely with DWR to ensure that our interests in the Settlement Agreement are protected. Most recently, Metropolitan and the SWCs filed an extensive Reply brief with FERC, which responds to the issues and concerns raised by Butte County and other Intervenor.

The next step is for FERC and DWR to conduct environmental reviews of the potential impacts associated with issuance of a new license, pursuant to the National Environmental Policy Act and the California Environmental Quality Act, respectively. Other future tasks include: negotiating and drafting agreements related to implementation of specific protection, mitigation and enhancement measures and other license conditions; securing various permits and approvals required by state and federal regulatory agencies; and responding to any additional filings submitted to FERC regarding the proposed Settlement Agreement and new license. Of course, Metropolitan will monitor all of these activities and continue to be actively involved in all aspects of the relicensing process for the Oroville Facilities.

As previously reported to the Board, Metropolitan has retained Davis Wright Tremaine LLP (Davis Wright) to provide legal counsel related to this matter. Davis Wright's work has included advising Metropolitan on various procedural, substantive and strategic issues related to the FERC relicensing proceeding, assisting Metropolitan in its negotiations with DWR and other stakeholders regarding the terms and conditions for the proposed Settlement Agreement, and preparing various legal briefs and filings required to be submitted to FERC in conjunction with its issuance of a new license.

Davis Wright initially was retained pursuant to the General Counsel's general authority to obtain expert assistance in amounts not exceeding \$100,000. In September 2005, the General Counsel's Office received approval from the Board to increase the maximum amount payable to Davis Wright to \$240,000. At the time, it was estimated that this increase would be sufficient to cover Davis Wright's activities on this matter through the end of calendar

year 2006. However, the scope and duration of settlement negotiations and certain other tasks resulted in a somewhat higher level of effort than was anticipated. As a result, it now appears that Davis Wright's fees and costs may exceed this limit prior to that time. Furthermore, although the settlement negotiations are largely concluded, there are significant number of other tasks that remain to be completed and will continue well into 2007 as noted above. The General Counsel's Office would like to continue retaining Davis Wright to assist Metropolitan on this matter as needed.

As of July 31, 2006, Davis Wright's costs and fees totaled almost \$200,000. It has been estimated that an additional \$40,000 in fees and costs will be incurred through the end of this year, and that approximately \$160,000 in fees and costs will be incurred in calendar year 2007. This estimate is based upon Davis Wright's average billings for the past year and assumes roughly the same level of effort on this matter. Accordingly, authority is requested to increase the maximum amount payable under the Davis Wright contract from \$240,000 to \$400,000.

## **Policy**

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

### **California Environmental Quality Act (CEQA)**

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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**

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### **Option #1**

Adopt the CEQA determination and approve amendment of contract for legal services with Davis Wright Tremaine LLP to increase maximum amount payable from \$240,000 to \$400,000.

**Fiscal Impact:** Up to \$160,000 in current and future invoices

**Business Analysis:** There are a significant number of tasks that remain to be completed related to the FERC relicensing proceeding for the Oroville Facilities, which will continue well into next year. Therefore, there is continuing need for the legal services being provided to Metropolitan by Davis Wright on this matter.

### **Option #2**

Do not amend subject contract.

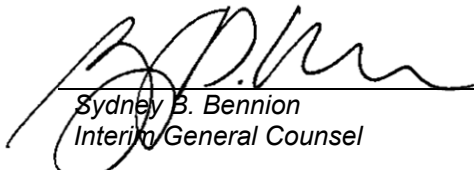
**Fiscal Impact:** Unknown at this time

**Business Analysis:** This would impair Metropolitan's ability to provide an adequate representation in this matter.

## **Staff Recommendation**

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Option #1

  
 Sydney B. Bennion  
 Interim General Counsel

8/23/2006

Date