

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

November 14, 2006 Board Meeting

7-7

Subject

Authorize entering into an agreement with the Resources Law Group for a maximum of \$300,000 to assist in preparation of the Bay-Delta Conservation Plan

Description

Last month Metropolitan's Board authorized the General Manager to execute the Planning Agreement for the Bay-Delta Conservation Plan (BDCP). The Planning Agreement establishes the broad contours of the BDCP and the procedure the participants will follow to develop and implement it. Development of the BDCP will require intensive effort by Metropolitan staff and consultants for an anticipated three years. The participants estimate that the final BDCP will be completed in 2008 and final California Endangered Species Act (CESA) and federal Endangered Species Act (FESA) compliance based on the BDCP would follow in 2009. Successful implementation of the BDCP will result in operational "assurances" for the State Water Project under both CESA and FESA, providing a more stable regulatory environment that allows future water supply and quality projects to proceed and to preserve and enhance Delta fisheries.

The General Counsel has an existing agreement with the Resources Law Group for general assistance on state and federal endangered species and permitting issues. That agreement has a maximum amount payable of \$100,000. Recently, Mr. Christopher Beale from that firm has played an increasingly important role in advising Metropolitan on the development of the BDCP Planning Agreement and staff anticipates he will continue that role in the negotiation and drafting of the BDCP itself. While representing Metropolitan's interests, Mr. Beale also has gained the confidence of Under Secretary of Resources Karen Scarborough, who represents the Schwarzenegger Administration in the process, and the respect of the other participants.

The Sacramento-based Resources Law Group has high-level legal and policy expertise in natural resources and land use law, including CESA, FESA and the California Natural Community Conservation Planning Act. Mr. Beale has significant prior experience as an attorney representing the California Department of Fish and Game on CESA issues, helped develop the CALFED multi-species conservation strategy and has worked on the development of numerous habitat conservation plans and natural community conservation plans throughout California. In addition to Mr. Beale, Michael A. Mantell (former Under Secretary of the California Resources Agency), Michael Valentine (former General Counsel for the California Department of Fish and Game and Chief of the California State Lands Commission's Land Management Division) and a number of associates and partners with substantial resources, permitting and land use planning experience are available in the firm.

Because of the key role Mr. Beale and his firm have established in the BDCP process, staff recommends that the Board authorize the Interim General Counsel to enter into a new agreement with Resources Law Group with a maximum amount payable to \$300,000.

Policy

The Board authorized the General Manager to execute a draft Memorandum of Agreement for supplemental funding to support near-term water supply, water quality, ecosystem and levee actions in the Delta (Minute Item 46747, July 11, 2006); and adopted general principles related to the CALFED Bay-Delta Program (Minute Item 45753, May 11, 2004).

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

Option #1

Adopt the CEQA determination and authorize the Interim General Counsel to enter into an agreement with the Resources Law Group for assistance on CESA and FESA issues, including development of the BDCP, with a maximum amount payable of \$300,000.

Fiscal Impact: Up to \$300,000

Business Analysis: Improves water supply reliability and improves conditions supporting implementation of future water supply and quality projects

Option #2

Do not authorize the Interim General Counsel to enter into the proposed agreement

Fiscal Impact: None

Business Analysis: No change to existing conditions

Staff Recommendation

Option #1



Sydney B. Bennion
Interim General Counsel

10/19/2006

Date