

- **Board of Directors**  
**Legal and Human Resources Committee**

April 8, 2008 Board Meeting

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**8-6**

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## **Subject**

Authorize amendment to a joint participation agreement among the State Water Contractors related to litigation regarding the Sacramento Regional County Sanitation District's planned expansion of its Sacramento Regional Wastewater Treatment Plant, increasing Metropolitan's contribution by \$256,643 with total agreement costs not to exceed \$706,643. [**Conference with legal counsel--existing litigation (*Alameda County Water District, et al. v. Sacramento Regional County Sanitation District, Sacramento County Superior Court Case No. 05CS00913*); to be heard in closed session pursuant to Gov. Code Section 54956.9(a)**]

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## **Description**

### **Summary**

In 2004, the Sacramento Regional County Sanitation District (SRCSD) approved a plan to expand its wastewater treatment plant. In response to potential water quality degradation from the project, Metropolitan and other urban State Water Contractor (SWC) agencies signed a funding agreement with the SWC to jointly pursue litigation. The case against SRCSD was successfully litigated over the summer of 2007, resulting in a final ruling in favor of Metropolitan and the other participating contractors. The SRCSD is expected to appeal the case, requiring further litigation in the Court of Appeal. Funds under the original SWC agreement have been exhausted and an additional \$256,643 from Metropolitan, as well as additional amounts from the other contractors, is required to litigate the anticipated appeal or fund participation in the remedial environmental review, as well as to pursue relief through the Regional Water Quality Control Board's permit renewal process. This would bring Metropolitan's total obligation under the agreement to \$706,643. If Metropolitan and the participating contractors are successful in the appeal, Metropolitan's legal fees and costs will likely be recovered.

### **Background**

SRCSD's Sacramento Regional Wastewater Treatment Plant discharges municipal wastewater into the lower Sacramento River of the Bay-Delta. The plant is already a significant wastewater discharger, responsible for over 70 percent of the current discharges from major municipal wastewater treatment plants in the entire Sacramento River basin. As part of its 2020 Master Plan, SRCSD proposes to expand the capacity of its wastewater treatment plant from 154 million gallons per day (mgd) to 218 mgd, an increase of over 40 percent. The proposed treatment process is secondary treatment as opposed to tertiary treatment, resulting in potential degradation of Delta water quality. Of particular concern to Metropolitan is degradation due to substantially increased mass loading of nutrients, total organic carbon, and pathogens from the proposed expansion. Not only would Delta water quality degradation affect drinking water quality, but recent research has identified degradation in Delta water quality as a potential contributor to the Pelagic Organism Decline (POD). The SRCSD certified an Environmental Impact Report (EIR) and approved its expansion project in June 2004. The EIR concluded the increased municipal wastewater discharges would have a less than significant impact on water quality.

In 2005, Metropolitan, other individual members of the SWC, the SWC, and Contra Costa Water District (CCWD) entered into a tolling agreement with SRCSD and attempted to work collaboratively to develop projects that would mitigate the Delta water quality impacts associated with the project. This effort resulted in a report entitled "Joint Study to Identify Projects of Mutual Benefit to SRCSD and Water Agencies." Those projects principally involved reducing pollutant loadings entering the Sacramento River from elsewhere in the watershed, to offset the increased pollutant loadings from SRCSD's increased discharges. The offset projects require partnerships with other public agencies and landowners, raising political and practical feasibility challenges.

Ultimately, SRCSD offered to make a relatively modest financial commitment toward a joint effort to continue exploring and attempting offset projects. That commitment was considered too little, too late. With no firm commitment to carry out the offset projects and the tolling agreement about to expire, Metropolitan, Alameda County Flood Control and Water Conservation District Zone 7, Alameda County Water District, Santa Clara Valley Water District, SWC, and CCWD initiated litigation against SRCSD regarding the adequacy of its EIR.

The individual lawsuits were subsequently combined into one case, which was litigated over the summer of 2007. The case against SRCSD was successful, resulting in a final ruling in favor of Metropolitan and the other water agencies on 8 of 11 California Environmental Quality Act (CEQA) challenges. The final ruling required that SRCSD perform a remedial environmental review, setting precedents for future litigation. The SRCSD is expected to appeal the case, requiring further litigation in the Court of Appeal. If SRCSD does not appeal, it will embark on the remedial CEQA review.

In addition to the CEQA process, relief is being sought through the Regional Water Quality Control Board (Regional Board) National Pollutant Discharge Elimination System (NPDES) permit renewal process. Metropolitan and the other participating water agencies are currently presenting information to the Regional Board regarding impacts of constituents of concern, requesting that the permit require constituent loading to be held at current levels. The NPDES renewal process is expected to continue through the summer of 2008, requiring preparation of materials for and attendance at applicable Regional Board meetings.

### **Joint Participation Agreement**

In fiscal year 2004/05, Metropolitan and the volunteering SWC members entered into a funding agreement with the SWC for litigation and study on the SRCSD expansion matter. Under the agreement, the participating SWC members agreed to jointly fund contracts for litigation and technical studies based on their proportionate "Table A" amounts. The contracts are administered by the SWC on behalf of the participating contractors. Through this agreement, the litigation effort has been supported by the Sacramento law firm Kronick Moskovitz Tiedemann & Girard.

Two amendments were made to the joint participation agreement in fiscal years 2005/06 and 2006/07, increasing Metropolitan's share of funding from \$162,427 to \$347,677 and \$347,677 to \$450,000, respectively. With these amendments, the combined amount for all participating contractors was increased to \$626,000. Due to extended litigation and the participation in the NPDES permit renewal process, funds under the joint participation agreement are now depleted. The estimated cost to complete litigation efforts or participate in the remedial CEQA review and participate in the NPDES permit renewal process is \$990,000, bringing Metropolitan's share under the joint participation agreement to \$706,643 – an increase of \$256,643 over the amount the Board previously authorized.

If Metropolitan and the other participating contractors are successful in litigation in the Court of Appeal and legal fees are recovered, Metropolitan's contributions to legal fees will be refunded.

### **Policy**

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Metropolitan Water District Administrative Code Section 8121(a): Contracts over \$250,000

By Minute Item 45844 on July 13, 2004 the Board authorized initiating legal action as appropriate.

By Minute Item 46631 on April 11, 2006 the Board authorized execution of an amendment to the Joint Participation Agreement among the SWC.

## California Environmental Quality Act (CEQA)

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CEQA determination for Option #1:

The proposed action, i.e., execution of an amendment to a joint participation agreement, 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

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### Option #1

Adopt the CEQA determination and authorize the General Manager to execute Amendment No. 3 to the funding agreement among the State Water Contractors regarding the Sacramento Regional County Sanitation District's planned expansion of its Sacramento Regional Wastewater Treatment Plant increasing Metropolitan's contribution by \$256,643 with Metropolitan's total agreement costs not to exceed \$706,643.

**Fiscal Impact:** \$256,643

### Option #2

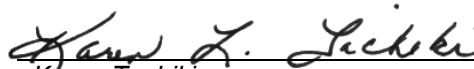
Do not authorize the General Manager to execute Amendment No. 3 to the funding agreement among the State Water Contractors regarding the Sacramento Regional County Sanitation District's planned expansion of its Sacramento Regional Wastewater Treatment Plant.

**Fiscal Impact:** None

## Staff Recommendation

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Option #1

  
 Karen Tachiki  
 General Counsel

3/18/2008  
 Date

  
 Jeffrey Rightlinger  
 General Manager

3/25/2008  
 Date