



- Board of Directors  
*Legal and Claims Committee*

9/11/2012 Board Meeting

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**7-4**

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## **Subject**

Authorize the amendment of contract with Ellison, Schneider & Harris to increase the maximum payable from \$100,000 to \$200,000 for preliminary analysis of the permits for the State Water Project and Central Valley Project

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## **Executive Summary**

The General Counsel has entered into a contract with Ellison, Schneider & Harris for up to \$100,000, pursuant to Administrative Code Section 6431, for a preliminary analysis related to the permits for the SWP and CVP. The purpose of this assignment is to determine the steps eventually needed for new permits. It is likely this assignment will exceed \$100,000, including the retention by Ellison, Schneider & Harris of technical subcontractors to be paid under its agreement with Metropolitan. Staff therefore recommends that General Counsel be authorized to increase the amount payable under the contract to \$200,000. The Santa Clara Valley Water District and Westlands Water District each has agreed to reimburse Metropolitan for one-third of the costs of the analysis.

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## **Details**

California's State Water Project (SWP) and the Federal Central Valley Project (CVP) both have appropriate water rights from the State Water Resources Control Board (SWRCB) to divert and store water for delivery to their contractors.

Metropolitan and other SWP and CVP contractors are interested in performing a preliminary analysis of the permits for the SWP and CVP. Eventually new permits will be necessary as part of the Bay Delta Conservation Plan and this preliminary analysis will identify the steps eventually needed for new permits.

In order to pursue this preliminary analysis, Metropolitan, Santa Clara Valley Water District (Santa Clara) and Westlands Water District (Westlands) propose to share the costs of legal and technical consultants. Each of the parties will pay one-third of the consultants' and other costs associated with the analysis. Towards this end, the General Counsel has retained the firm of Ellison, Schneider & Harris pursuant to Metropolitan Administrative Code Section 6431 for the maximum amount of \$100,000. The firm will assist in addressing the legal issues involved in the analysis and in managing the technical consultants. Kennedy/Jenks Consultants will provide the technical analysis as a subcontractor to Ellison, Schneider & Harris and be paid through Metropolitan's contract with Ellison, Schneider & Harris. Metropolitan, Santa Clara and Westlands have entered into a cost-share and confidentiality agreement requiring the other two parties to each reimburse Metropolitan for one-third of the legal and technical costs of the analysis.

It is anticipated that the total costs for the preliminary legal and technical analysis will exceed \$100,000. For these reasons, staff recommends that the Board authorize the General Counsel to amend the current contract with Ellison, Schneider & Harris to increase the maximum amount payable by \$100,000 to a total maximum of \$200,000. After reimbursement from Santa Clara and Westlands, Metropolitan's costs under the amended contract would be a maximum of \$66,667.

## Policy

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Metropolitan Water District Administrative Code Section 4203: Water Transfer Policy  
 Metropolitan Water District Administrative Code Section 6430: Powers and Duties (of General Counsel)  
 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 the creation of government funding mechanisms or 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 authorize the General Counsel to amend agreement No. 124110 with Ellison, Schneider & Harris to increase the maximum payable by \$100,000 to a total of \$200,000.

**Fiscal Impact:** A maximum of \$66,667

**Business Analysis:** The proposed analysis is the SWP and CVP could lead to enhanced efficiency and flexibility of those projects' operations and enhance Metropolitan's ability to carry out water transfer, exchanges and other water management programs. Due to the cost sharing agreement between Metropolitan, Santa Clara Valley Water District and Westlands Water District, Metropolitan will obtain the benefit of the analysis at a very reasonable cost.

### Option #2

Do not authorize the General Counsel to amend contract No. 124110 with Ellison, Schneider & Harris to increase the maximum amount payable by \$100,000 to a total of \$200,000.

**Fiscal Impact:** Assuming Metropolitan pursues the analysis with the existing contract maximum, up to \$33,333. If the analysis is not pursued due to lack of funding the fiscal impact could be less.

**Business Analysis:** If the contract maximum is not increased, the analysis could be incomplete or abandoned.

## Staff Recommendation

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Option #1

  
 Marcia L. Scully  
 General Counsel

8/24/2012  
 Date