



- Board of Directors  
*Legal and Claims Committee*

3/10/2015 Board Meeting

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**8-7**

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## **Subject**

Authorize increase in maximum amount payable under contract with Van Ness Feldman LLP for legal services related to preparation of the Bay Delta Conservation Plan by \$150,000 to an amount not to exceed \$250,000

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## **Executive Summary**

This is a request from the General Counsel's Office to increase the maximum amount payable under a contract with outside counsel by \$150,000, for the purpose of assisting the General Counsel and staff in resolving outstanding issues in completion of the planning and development phase of the Bay Delta Conservation Plan.

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## **Details**

In 2006, multiple state and federal resource agencies, water agencies, and stakeholder groups entered into a Planning Agreement for the Bay Delta Conservation Plan (BDCP). The basic, underlying purpose of the BDCP is to restore and protect Delta water supply, water quality, and ecosystem health within a stable regulatory environment. The BDCP is intended to provide for fundamental and systematic improvements in water supply reliability and the Delta's ecosystem health and to result in endangered species permits for in-Delta actions including conveyance improvements and operations for the State Water Project (SWP) and Central Valley Project (CVP).

The Draft BDCP, Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and related plan documents were made available for public review and comment from December 13, 2013 through July 29, 2014. Based in part on public comments received, a supplemental Draft EIR/EIS is currently being prepared and is anticipated to be released for public review in late spring 2015.

In December 2013, the General Counsel retained the D.C.-based law firm Van Ness Feldman to assist Metropolitan in our efforts to participate with California Department of Water Resources (DWR) and the other stakeholders in the resolution of outstanding issues in the planning and development of the BDCP. Van Ness Feldman is nationally recognized for their environmental practice on a wide range of federal and state regulatory compliance, enforcement, permitting, and legislative matters. The firm has high-level legal and policy expertise in federal environmental protection laws, including the ESA, National Environmental Policy Act (NEPA), Clean Air Act (CAA), Clean Water Act (CWA), as well state equivalents including the California Environmental Quality Act (CEQA). All key Van Ness Feldman attorneys assisting Metropolitan on the BDCP effort have prior federal government experience, including at the agency and legislative branch levels. Their public agency clients include the Los Angeles Department of Water and Power, Central Arizona Water Conservation District, Sonoma County Water Agency, North Slope Borough, Alaska and numerous power entities in the Pacific Northwest. Their work in Sonoma County included a Russian River BiOp which was accepted by all parties and not challenged in the courts. They assisted in gaining approval for the Pacific Coastal Salmon Recovery Fund and worked to gain federal support for the Federal Columbia River Power System BiOp.

While Legal Department staff with expertise in Delta and SWP water supply, water rights, ESA, and CEQA/NEPA issues have been and will continue to be directly involved in the BDCP process, the specialized

expertise of Van Ness Feldman add to the existing expertise within Metropolitan and provides needed additional resources.

Because of the important role the firm plays in assisting Metropolitan's staff in the BDCP process, staff recommends that the Board authorize the General Counsel to amend the existing agreement with Van Ness Feldman to increase the maximum amount payable by \$150,000 to \$250,000. The additional amount requested is intended to carry through completion of the BDCP development phase.

## **Policy**

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This board action is consistent with the Board's Delta policy principles memorialized in the following prior policy adoptions:

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan.

By Minute Item 47605, dated August 19, 2008, the Board approved Delta Governance Principles as outlined in the board letter.

## **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, such as general policy and procedure making (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 defined as a project and 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 that the proposed action is not defined as a project and is not subject to CEQA, and authorize the General Counsel to amend the existing agreement with Van Ness Feldman LLP to increase the maximum amount payable by \$150,000 to \$250,000.

**Fiscal Impact:** Up to \$150,000

**Business Analysis:** If developed and implemented as anticipated, the BDCP will assist in providing a reliable SWP supply for Metropolitan.

### **Option #2**

Do not authorize the General Counsel to amend the existing agreement with Van Ness Feldman LLP.

**Fiscal Impact:** None

**Business Analysis:** If the existing agreement with Van Ness Feldman LLP is not extended, Metropolitan would lose access to specialized legal expertise in state and federal permitting issues while the BDCP is finalized. As a result, the BDCP's ability to achieve the anticipated water supply benefits for Metropolitan could be compromised.

**Staff Recommendation**

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Option #1



Marcia Scully  
General Counsel

2/25/2015  
Date

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