

Agenda Item: {{section.number}}E

December 4, 2023

TO: THE ENGINEERING, OPERATIONS, AND WATER RESOURCES COMMITTEE

Director Gracie Torres

Director Fauzia Rizvi

FROM: Tim Barr, Deputy General Manager

APPROVE FUNDING FOR A PURCHASE ORDER WITH DONALD L. HARRIGER IN SUPPORT OF WESTERN-SAN BERNARDINO WATERMASTER ACTIVITIES

RECOMMENDATION:

Staff requests that the Engineering, Operations, and Water Resources Committee recommend the Board of Directors:

1. Approve an amendment to increase the Board adopted Fiscal Year 2023-2024 Operating Budget in an amount of \$180,000, and
2. Authorize the General Manager to issue a Purchase Order in an amount of \$180,000 with Mr. Donald L. Harriger in support of Western-San Bernardino Watermaster Activities.

EXECUTIVE SUMMARY:

The Western Municipal Water District general manager serves as one of two members of the Court-appointed Western-San Bernardino Watermaster Committee. The water resources staff at Western Municipal Water District and San Bernardino Valley Municipal Water District support the general managers with the well recordation process, the accounting of extractions and deliveries of groundwater from the three adjudicated basins, and the preparation of annual reports as required by the Riverside County Superior Court's 1969 judgment in Western Municipal Water District et al. v. East San Bernardino County Water District et al., Case No. 78426 (the "Judgment"). A long-time, former member of the Watermaster Committee, Mr. Harriger from time to time has provided education to new staff and legal counsel, composed numerous writings regarding the Judgment and past policies, and generally supported staff with the challenges of interpreting the intent and implementing accounting practices that began more than 50 years ago. Mr. Harriger's support in recent years has been covered under the water

resources studies and projects budget and within staff's funding authorities. In this case, staff is requesting Mr. Harriger's assistance in the development of more complex and time-intensive Judgement documents that will ultimately be submitted to the Riverside Superior Court.

BUDGET IMPACT:

To accommodate the proposed budget, an amendment is needed to increase the Board adopted Fiscal Year 2023-2024 Operating Budget by \$180,000. The budget increase will be applied to the Water Resources Studies and Projects budget under Account 57511 and as this effort supports the General District, it will be funded using General District reserves.

DETAIL:

Although the Judgment by design is prescriptive in nature to preserve the rights and obligations of the parties, it has served the region well for more than 50 years because the framers of the settlement saw fit to include a provision for alternative agreements that work within the provisions of the document. The Judgement permits minor modifications to, for example, accounting methodology and additional extractions, if a Judgment Paragraph VI (b) 6 Agreement has been supported unanimously by both members of the Watermaster Committee and formally submitted to the Court.

A Judgement Paragraph VI (b) 6 Agreement (Agreement) is necessary to accommodate future extractions of water stored under the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP). The Judgement as written allows for Western Municipal Water District (Western Water), the member agency of the Metropolitan Water District of Southern California, the regional water importer, to store water in the San Bernardino Basin Area (SBBA). The challenge is that water rights are formally defined in the SBBA and when water is extracted, it must be recorded against an entity with the rights to extract. The entities within Western Water (also known as Plaintiffs) are legally prohibited from extracting more than their defined rights in the SBBA. An extraction by an entity within the San Bernardino Valley Municipal Water District (San Bernardino Valley) service area is recorded against their Judgment-defined portion of the safe yield of the basin. Without a modification to the accounting methodology, stored water becomes unavailable for extraction. A court-approved Agreement is necessary to redefine and modify the current accounting methodology so that SARCCUP water is properly tracked and recorded. The last time an Agreement of this nature was prepared and submitted to the Court was in 2006 for the 6,000 acre-feet of imported water stored by Western Water in the SBBA. This transaction was less complex as there was only a single entity involved and a one-time transaction was anticipated. SARCCUP will have multiple transactions of water stored and extracted by perhaps all five of the SARCCUP partners.

In addition, the Watermaster parties are eligible for modifications to their base water rights in the SBBA if they invest in projects that result in more water being added to the basin than was naturally recharging and contributing to the safe yield of the basin at the time of the Judgment. These projects are called New Conservation Activities. The Enhanced Recharge Project currently underway below the Seven Oaks Dam is an example of one of these projects and is being funded by San Bernardino Valley and the Plaintiffs. New Conservation is formally defined in the Judgment and is required to be recalculated and redetermined by the Watermaster Committee no more than every 10 years to ensure water rights are properly adjusted up or down from time to time. The first and most recent time New Conservation was determined was in 2012-2013. The current staff at Western Water and San Bernardino Valley did not take part in this recalculation and would appreciate the guidance of someone that has intimate knowledge to prepare the documentation.

Mr. Donald L. Harriger was a Watermaster Committee Member from 1974 to 2003 and Western Municipal Water District's General Manager from 1989 to 2003. Mr. Harriger has routinely assisted with the education of new staff regarding the rights and requirements of the Judgment. Mr. Harriger oversaw the development of more than 20 Judgment Paragraph VI (b) 6 Agreements and the first determination of New Conservation. He is uniquely qualified to assist with this effort.

Reason for Action:

Staff are seeking knowledgeable support for Watermaster documentation activities.

Solution:

Approve the budget adjustment and the issuance of a purchase order for Donald L. Harriger.

STRATEGIC PRIORITIES REFERENCE:

This action aligns with Western Water's strategic priorities of Superior Service and Resource Management.

PROPOSED DATE OF ACTION:

If approved by the Committee, this item is scheduled for consideration by the full Board of Directors at their meeting on December 20, 2023.

LEGAL COUNSEL REVIEW:

Not applicable.

Respectfully submitted by:

Tim Barr, Deputy General Manager