

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>8D</u>
Date of Meeting	<u>May 7, 2024</u>

DATE: April 16, 2024

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Dana Henderson, General Counsel

Project Manager: Mindi Kellar, Senior Manager, Water Quality

SUBJECT: 2020 Industrial Stormwater General Permit (“ISGP”) Appeal Project Authorization Increase

A. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (“NWSA”) increase project authorization in the amount of \$200,000 for a total authorized amount of \$807,890 for the 2020 Industrial Stormwater General Permit Appeal project (MID 201093.01) (“Project”); including the contract for outside legal services with Tupper Mack Wells firm in connection with the Project.

B. SYNOPSIS

In 2019, the NWSA and the Homeports of Seattle and Tacoma appealed the 2020 Industrial Stormwater General Permit (“2020 ISGP”) to the Pollution Control Hearings Board (“PCHB”) on multiple grounds, including that the scope of the 2020 ISGP did not extend to those areas of marine terminals not involving ISGP-triggering activities (vehicle maintenance, equipment cleaning and airport deicing). The PCHB granted summary judgment in favor of the port interests. The PCHB’s ruling was then appealed to Division 1 of the Washington State Court of Appeals, which reversed the PCHB’s ruling on March 18, 2024. In a continuation of existing litigation strategy, the port interests, along with SSA Terminals, LLC and Pacific Merchant Shipping Association have filed a Petition to Review to the Washington State Supreme Court seeking review of the Court of Appeals decision. Additional project authorization in the amount of \$200,000 should provide sufficient funding for associated staff time and outside legal counsel fees and costs should the Supreme

Court grant the Petition. A decision by the Supreme Court on whether it will grant review is expected this summer.

C. FINANCIAL IMPLICATIONS

Source of Funds

This unplanned expense will be funded by NWSA operating cash.

Financial Impact

The unplanned \$200,000 expense is not material and will be absorbed within the NWSA's \$124,000,000 cash expense budget.

D. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
November 27, 2019	Executive Contract Authorization – Legal Services	\$150,000
February 26, 2020	Executive Authorization – Staff Time	\$71,240
November 13, 2020	Executive Authorization – Legal Services	\$70,000
February 2, 2021	Commission Authorization – Legal Services	\$180,000
June 1, 2021	Commission Authorization – Expert Consulting Charges, Outside Legal Services, and Staff Time	\$136,650
	TOTAL prior to this request	\$607,890