

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>4E</u>
Date of Meeting	<u>May 7, 2019</u>

DATE: April 25, 2019

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Deanna Seaman, Environmental Senior Project Manager

SUBJECT: Increase Legal Contract with Tupper Mack Wells for the Soundkeeper / APMT Clean Water Act Lawsuit

A. ACTION REQUESTED

As referenced in NWSA Resolution No. 2018-01, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.c.iii., states project costs exceeding \$300,000 require approval from Managing Members.

Request project authorization in the amount \$350,000 for a total authorized amount of \$1,052,230, for work associated with the Soundkeeper / APMT Clean Water Act Lawsuit, Master Identification No. 201046.01.

B. SYNOPSIS

This request is to enable NWSA to extend the legal contract with Tupper Mack Wells PLLC through a legal analysis of judicial decisions on currently pending motions, potential settlement discussions, appeal and potential restart of the trial phase of the Port of Tacoma's defense of Puget Soundkeeper Alliance v. Port of Tacoma, et al.

C. BACKGROUND

Soundkeeper sent a notice of intent to sue letter to APMT on November 2, 2016, and filed its lawsuit on January 2, 2017. Soundkeeper provided the Port with notice of its intent to sue on July 20, 2017. On October 2, 2017, the Port obtained Permit coverage for the West Sitcum Terminal (Terminal). On October 23, 2017, Ecology and the Port signed an Agreed Order modifying the schedule in the Port's Permit for the Port's implementation of a stormwater treatment system at the Terminal. During October 2017 the Port made significant efforts to come into full compliance with the Permit. Soundkeeper filed a complaint on November 29, 2017, adding the Port to the lawsuit.

Pending motions before the Court are Soundkeeper's motion for leave to add SSA Terminals (Tacoma), LLC and SSA Terminals, LLC as defendants; APMT's Motion to Dismiss the Port's crossclaim; the Port's Motion for Partial Summary Judgment, Soundkeeper's Motion for Partial Summary Judgment and the Port's Cross Motion for Summary Judgment.

D. PROJECT DESCRIPTION AND DETAILS

The scope of work includes:

- Staff time for analysis, response, and trial phases as well as potential settlement discussions.
- Response to three potential scenarios: (1) trial on Soundkeeper's claims; (2) an appeal or defense of an appeal of the court's decisions on the pending dispositive motions; and (3) initial pre-trial advocacy on the Port's crossclaims against APMT.

E. FINANCIAL IMPLICATIONS

Project Cost Details

	This Request	Total Project Cost	Cost to Date	Remaining Cost
Legal/Consulting/Staff	\$ 350,000	\$ 1,052,230	\$ 702,192	\$ 350,038
Total	\$ 350,000	\$ 1,052,230	\$ 702,192	\$ 350,038

Source of Funds

The current Capital Investment Plan (CIP) allocates \$1,626,000 for this effort over three years. Of this amount \$625,800 was spent in the prior year.

Financial Impact

Project costs will be expensed as incurred. The 2019 budget includes \$500,000 for this expense.

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing.

Alternative 2) Proceed with the current course of action, prepare for trial and/or appeal, and evaluate options for settlement.

Alternative 2 is the recommended course.

G. ENVIRONMENTAL IMPACTS/REVIEW

Permitting:

There are no permitting implications right now. The outcome of the lawsuit has the potential to change how we permit terminals and other facilities.

Remediation:

There are no remediation impacts.

Stormwater:

This lawsuit directly impacts how the Port will manage and respond to stormwater permits and the Clean Water Act.

Air Quality:

There are no identified impacts to air quality.

H. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.

I. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
December 19, 2017	Executive Authorization	\$80,000
March 29, 2018	Executive Authorization	\$60,230
May 15, 2018	Executive Authorization	\$32,000
June 4, 2018	Executive Authorization	\$40,000
July 27, 2018*	Executive Authorization	\$190,000
November 13, 2018*	Commission Authorization	\$300,000
May 7, 2019*	<i>Request Commission Authorization</i>	<i>\$350,000</i>
TOTAL		\$1,052,230

* Includes staff time

J. NEXT STEPS

There are no pending case-related deadlines as the court temporarily stayed the case schedule.