



Item No.: 4E_supp
Date of Meeting: May 7, 2019

Increase Legal Contract – West Sitcum Project

Presenter: Deanna Seaman
Title: Environmental Senior Project Manager

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 Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to authorize \$350,000, for a total authorized amount of \$1,052,230 for the Legal Contract with Tupper Mack Wells for the Soundkeeper / APMT / POT / SSATT Clean Water Act Lawsuit, Master Identification No. 201046.01.



Background

- January 2, 2017 – Soundkeeper Filed Suit against APMT in Federal Court.
- October 2, 2017 – POT became the NPDES Permit Holder at the West Sitcum Terminal.
 - October 23, 2017 – POT signed an agreed order with Ecology.
 - Install interim BMPs immediately.
 - Install treatment by 9/30/18.
- November 29, 2017 – Soundkeeper added POT to the lawsuit with APMT.
- Motion to add SSAT to the lawsuit denied 1/29/19.
- 4th Amendment to add SSATT and SSAT to the suit is pending before the court.
- Two decisions are pending before the court.



Project Request

- The requested increase includes:
 - Staff time for analysis and trial / appeal phases as well as potential settlement discussions
 - Consultant and legal services through analysis and trial / appeal phases as well as potential settlement discussions



Financial Summary

<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



Alternatives Considered and Implications

- No Action Alternative: There are no proposed settlement terms at this point.
- Recommended action: Move forward with appeal / litigation related activities depending on judicial decision outcomes.



Environmental Impacts/Review

- Permitting: No Impacts.
- Remediation: No Impacts.
- Water Quality: This lawsuit could potentially impact how the Port will manage and respond to stormwater permits and the Clean Water Act.
- Air Quality: No impacts.



Financial Impact

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



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