



AGENDA ITEM NO.
C18

COUNTY OF HUMBOLDT

For the meeting of: February 13, 2018

Date: January 31, 2018
To: Board of Supervisors
From: Thomas K. Mattson, Public Works Director *TS for TM*
Subject: Second Amendment to the Legal Services Agreement with Water and Power Law Group PC

RECOMMENDATION:

That the Board of Supervisors approve, and authorize the Chair of the Board to execute, the attached second amendment to the legal services agreement with Water and Power Law Group PC.

SOURCE OF FUNDING:

General Fund – Water Management (251)

DISCUSSION:

On February 9, 2016, the Board approved a legal services agreement with Water and Power Law Group PC regarding the provision of legal consultation services pertaining to the County's water delivery contract with the Bureau of Reclamation for annual releases from the Trinity Reservoir. The first amendment to the legal services agreement which allowed the provision of such legal consultation services to continue during fiscal year 2016-2017 was subsequently approved on April 25, 2017. The attached second amendment to the legal services agreement would allow for the provision of the above-referenced legal consultation services during fiscal year 2017-2018.

FINANCIAL IMPACT:

The attached second amendment to the legal services agreement with Water and Power Group PC will increase the maximum amount payable thereunder by Twenty Thousand Dollars (\$20,000.00). An

Prepared by Hank Seemann CAO Approval Karen Clower
REVIEW: Auditor MM County Counsel SM Human Resources _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor Bass Seconded by Supervisor Fennell
Ayes Bass, Fennell, Sundberg, Bohn, Wilson
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:
Board Order No. C-12
Meeting of: April 25, 2017

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 2/13/18
By: [Signature]
Kathy Hayes, Clerk of the Board

expenditure appropriation for the legal consultation services that will be provided pursuant to the terms and conditions of the attached second amendment has been incorporated into the approved fiscal year 2017-2018 Water Management budget (1100251-2118).

The requested action supports the Board's Strategic Framework by providing for and maintaining infrastructure and creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

1. Legal Services Agreement with Water and Power Law Group PC dated February 9, 2016
2. First Amendment to the Legal Services Agreement with Water and Power Law Group PC dated February 9, 2016
3. Second Amendment to Legal Services Agreement with Water and Power Law Group PC dated February 9, 2016

Legal Services Agreement
Between Humboldt County and Water and Power Law Group PC

Humboldt County and Water and Power Law Group PC (WPLG) hereby agree that WPLG will provide legal services on the terms set forth below.

1. **Scope of Legal Services.** The County engages WPLG to provide legal services on the issues stated in the December 22, 2015 Briefing Memorandum, "Legal consultation regarding Humboldt County's statutory entitlement and contractual right for not less than 50,000 acre-feet of Trinity River water annually." The scope does not include litigation.

2. **WPLG's Duties.** WPLG will provide those legal services required to effectively represent the County in this matter. WPLG will regularly report to the County on strategy, status, and developments. WPLG will promptly respond to the County's inquiries.

3. **Humboldt County's Duties.** The County will cooperate with WPLG and keep WPLG informed of relevant facts and developments in the performance of legal services under this Agreement. The County will pay WPLG's fees and expenses for such services as provided below.

4. **Fees.** The County will pay fees for time incurred by WPLG employees in providing legal services. Fees will be charged for all tasks reasonably required for this purpose, including research and drafting, meetings, telephone calls, emails, travel time (at one-half ordinary rate) and court appearances. Fees will be charged in increments of one-tenth of an hour.

5. **Hourly Rates.** As of the Effective Date, the following hourly rates apply:

Richard Roos-Collins, Principal	\$350/hour
Julie Gantenbein, Shareholder	\$175/hour
Paul Kibel, Water and Natural Resource Counsel	\$250/hour
Emma Roos-Collins/Tiffany Poovaiah, paralegals	\$75/hour.

These fee rates are subject to change on or after January 1, 2017 on 30 days' written notice to the County. If the County does not agree to pay such increased rates, and the County and WPLG do not reach a mutual understanding on the terms of continued representation, either may terminate the Agreement as provided in paragraph 12.

6. **Expenses.** The County will pay WPLG directly for travel and other expenses incurred to provide legal services in this matter. WPLG may engage consultants as needed for effective representation of the County in this matter; *provided* that WPLG will obtain the County's approval for any expense estimated to cost more than \$500. WPLG will pass-through all such expenses without mark-up.

7. **Billing Statement.** WPLG will send the County a monthly statement of fees and expenses incurred. The County will pay the amount due within 30 days of receipt of the

statement. If the County disputes any part of the amount due, it will provide notice to WPLG within that period, and it will pay the balance which is undisputed. WPLG may charge interest at a rate of .5% per month, or 6% per year, for any undisputed amount which is not timely paid.

8. **Dispute Resolution.** If a dispute arises about a billing statement or in any other respect under this Agreement, the County and WPLG will promptly undertake negotiation to resolve the dispute. If such negotiation does not resolve the dispute, the County and WPLG will undertake mediation before either resorts to arbitration, litigation, or any other dispute-resolution procedure.

9. **Periodic Estimate for Legal Services; Adjustment.** If instructed by the County, WPLG will estimate the fees and expenses that may be incurred in the subsequent quarter or for any other period which the County prefers. This estimate will be best professional judgment based on current and foreseeable circumstances and will not constitute a guarantee. In response to this estimate or otherwise, the County may provide an instruction regarding the amount of fees and expenses not to be exceeded in a given period. WPLG will not exceed the amount so instructed unless and until: (a) WPLG notifies the County that an adjustment may be necessary due to changed circumstances, and (b) the County and WPLG reach a mutual understanding on an adjustment. WPLG is not obliged to provide legal services if the County and WPLG do not reach a mutual understanding on an estimate or adjustment for a given period.

10. **Retainer.** By amendment to this Agreement, the County and WPLG may establish an arrangement whereby the County will pay a fixed monthly retainer to cover fees in a matter, subject to appropriate further terms (including exceptions).

11. **Attorney's Fee Award.** An award of attorneys' fees and expenses obtained against another party in a matter will first be applied to pay WPLG's outstanding fees and expenses. Award funds will next be applied to reimburse the County for their prior payments on WPLG's statements, and for other expenses that were (a) directly incurred by the County for external services (such as engagement of a consultant) and (b) covered by the award. WPLG will retain any remaining award funds. The County will not impair or waive any right WPLG may have to seek such an award against another party in this matter. Such right will not be extinguished by discharge or withdrawal pursuant to paragraph 12.

12. **Discharge or Withdrawal.** The County may discharge WPLG at any time and for any reason. WPLG may withdraw with the County's consent or for good cause. Good cause includes the County's breach of this Agreement, its non-cooperation with WPLG or its declining to follow WPLG's advice on a decision material to the representation, or any fact or circumstance that renders WPLG's continuing representation unlawful or unethical. If this Agreement terminates, WPLG will provide a final statement, which will be due and payable. Upon the County's request, WPLG will deliver to the County its file and other property in WPLG's possession.

13. **Disclaimer of Guarantee.** WPLG does not make any promise or guarantee about the outcome of the matter.

14. **Entire Agreement.** This is the entire Agreement between the County and WPLG for legal services.

15. **Amendment.** This Agreement may be amended only in written form.

16. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will be severable and remain in effect, subject to any amendment pursuant to paragraph 15.

17. **Effective Date.** This Agreement will take effect when executed by the County and WPLG.

Dated: February 9, 2016



Mark Lovelace
Chairman, Board of Supervisors
HUMBOLDT COUNTY

Dated: February 2, 2016



Richard Roos-Collins
Principal,
WATER AND POWER LAW GROUP PC

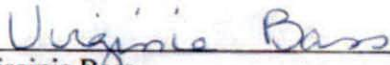
**First Amendment to Legal Services Agreement between Humboldt County and
Water and Power Law Group PC**

Humboldt County and Water and Power Law Group PC hereby amend Sections 1 and 9 of their Legal Services Agreement as signed on or about February 2, 2016 (Attachment 1). All other terms remain in effect.

1. **Scope of Legal Services.** The scope is hereby amended to include: (1) assistance with analyzing federal legislation that may affect the 1959 Contract, and (2) development of Memoranda of Understanding or other appropriate legal documentation with (a) U.S. Department of the Interior's Bureau of Reclamation related to the interpretation and implementation of the 1959 Contract and (b) with Yurok and Hoopa Tribes regarding implementation of the 1959 Contract. This scope does not include litigation.


9. **Periodic Estimate for Legal Services; Adjustment.** For the period February 15, 2017 through June 30, 2017, fees and expenses will not exceed \$20,000.

Dated: ~~February~~ ^{April} 25, 2017



Virginia Bass
Chairperson, Board of Supervisors
HUMBOLDT COUNTY

Dated: February 20, 2017




Richard Roos-Collins
Principal,
WATER AND POWER LAW GROUP PC

**Second Amendment to Legal Services Agreement between Humboldt County and
Water and Power Law Group PC**

Humboldt County and Water and Power Law Group PC hereby amend Section 9 of their Legal Services Agreement as signed on or about February 2, 2016 (Attachment 1) and amended on or about April 25, 2017 (Attachment 2). All other terms remain in effect.


9. **Periodic Estimate for Legal Services; Adjustment.** For the period January 1, 2018, through June 30, 2018, fees and expenses will not exceed \$20,000.

Dated: February 13, 2018



Ryan Sundberg
Chairperson, Board of Supervisors
HUMBOLDT COUNTY

Dated: January 31, 2018



Richard Roos-Collins
Principal,
WATER AND POWER LAW GROUP PC