



Costa Mesa Sanitary District

....an Independent Special District

Memorandum

To: Board of Directors

From: Alan Burns, District Counsel

Date: August 25, 2016

Subject: **Cost to Prepare the Administrative Record in the Costa Mesa Sanitary District v. Regional Water Quality Control Board Litigation**

Summary

This request asks the District to pay the cost to prepare the Administrative Record in the Costa Mesa Sanitary District v. Regional Water Quality Control Board litigation. The Board has already authorized this litigation, this request merely asks approval to pay the cost of the record which is necessary to proceed to trial.

Staff Recommendation

That the Board of Directors approves paying the administrative record cost of \$7,070.00

Analysis

CMSD has challenged the decision of the Regional Water Quality Control Board (RWQCB) imposing a fine on CMSD arising out of the sanitary sewer overflows at Irvine Pump Station on August 31, 2013 and from the Indus pipeline on January 1, 2015. To challenge that fine, the District was required to file a Petition for Administrative Mandamus. The trial in a Petition for Administrative Mandamus is based on the record produced in a lower tribunal. In this case, the lower tribunal was the hearing conducted before the RWQCB, which occurred at the Irvine Ranch Water District (IRWD) headquarters. The record has now been prepared and we have received an itemized bill for those services (attached).

Although Respondent (RWQCB) is responsible for preserving and creating the record, the Petitioner (CMSD) is responsible for paying for the cost of preparing the record in the first instance. If we prevail, we are entitled to be recover our "costs" which include



Protecting our community's health and the environment by providing solid waste and sewer collection services.

www.cmsdca.gov

the cost to prepare the record. Of course, if we do not prevail, we will not recover those costs.

The cost for the record is \$7,070 as shown on the attached invoice. We also ask for an additional sum to obtain a hard copy, which is what the court wants; however, the sum is unknown at this time.

Strategic Plan Element Goal

This item complies with Strategic Plan Element 4, *Community Outreach & Communications* and Strategic Plan Goal No. 4.1, *Conduct community outreach survey*.

Legal Review

District Counsel has prepared this report.

Environmental Review

Preparing an administrative record is an administrative matter and is not a disturbance of the environment similar to grading or construction and is not a project under CEQA or the District's CEQA Guidelines.

Financial Review

Funding for the administrative record cost is not budgeted; however, there is sufficient money in the current legal budget. This expense would be charged entirely to the Wastewater Fund.

Public Notice Process

Copies of this report are on file and will be included with the complete agenda packet for the August 25 2016 Board of Directors meeting at District Headquarters and posted on the District's website.

Alternative Action

1. Abandon the litigation and dismiss the Petition.

Reviewed by:



Wendy Hooper Davis
Finance Manager

From: **Deborah Fletcher** Deborah.Fletcher@doj.ca.gov
Subject: FW: CMSD V. RWQCB
Date: August 9, 2016 at 10:07 AM
To: Alan Burns arburns@harperburns.com

Good morning Allan:

The certified administrative record in Costa Mesa Sanitary District v Regional Water Quality Control Board is complete. I apologize for the delay.

The cost of the record is \$7,070.00 – see attached. Please send, in care of this office, a check in the amount of \$7,070.00 made payable to the Regional Water Quality Control Board, Santa Ana Region. Upon receipt, we will provide a copy of the record on a DVD. The Court has indicated a preference for a hard copy. If you also desire a hard copy, there may be an additional charge – please let me know. At this point, I only have an electronic version of the record and will have the Court's hard copy printed from the electronic version.

I do not plan to lodge the record with the Court until some time after the September 12, 2016 Case Management Conference, when we can inquire when the court prefers to have the record. Because San Diego tends to be short on space, most judges request that the lodging of administrative records be delayed until the matter is fully briefed.

Regards,

Deborah M. Fletcher

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Santa Ana Regional Water Quality Control Board

COST ESTIMATE FOR PREPARATION OF ADMINISTRATIVE RECORD IN:

***THE COSTA MESA SANITARY DISTRICT V. THE SANTA ANA REGIONAL WATER
QUALITY CONTROL BOARD ET AL.; SUPERIOR COURT OF THE COUNTY OF
ORANGE CASE NO. 30-2016-00848260-CU-WM-CJC***

Regional Water Board Staff Costs:

| | | |
|---------------------|-----------------|--------------------|
| Michelle Beckwith | 5 hours @ \$74 | per hour = \$ 370 |
| Hope Smythe | 40 hours @ \$84 | per hour = \$3,360 |
| Dan Mefford | 3 hours @ \$43 | per hour = \$ 129 |
| Katherine Duprey | 32 hours @ \$15 | per hour = \$ 480 |
| Felipa Carillo | 18 hours @ \$22 | per hour = \$ 396 |
| David Rice | 10 hours @ \$76 | per hour = \$ 760 |
| Catherine Ehrenfeld | 35 hours @ \$45 | per hour = \$1,575 |

Total Staff Costs:

\$7,070