

CITY OF SANTA ROSA  
BOARD OF PUBLIC UTILITIES

TO: BOARD OF PUBLIC UTILITIES  
FROM: MOLLY MACLEAN, ASSISTANT CITY ATTORNEY  
KIMBERLY ZUNINO, DEPUTY DIRECTOR OF WATER  
ADMINISTRATION  
SUBJECT: APPROVAL – LEGAL SERVICES AGREEMENT WITH JARVIS  
FAY & GIBSON

AGENDA ACTION: MOTION

---

RECOMMENDATION

It is recommended by the City Attorney's Office and the Water Department that the Board, by motion, approve a Professional Service Agreement (PSA) for legal services with the law firm of Jarvis Fay & Gibson, Oakland (Jarvis Fay), to provide specialized legal services to assist with the defense of a legal challenge to the City's water rates, in amount not to exceed one hundred fifty thousand dollars (\$150,000).

---

EXECUTIVE SUMMARY

This proposed action will award a PSA for legal services to Jarvis Fay to provide legal services in the defense of the recent Prop 218 water rates complaint filed against multiple water retail agencies, including the City of Santa Rosa.

BACKGROUND

The City of Santa Water provides retail water services to approximately 53,000 customers city wide. Proposition 218 was passed by the California voters in November 1996 and added articles XIII C and XIII D to the California Constitution, which set forth limitations on retail water utilities in the setting of fees and charges, in addition to proscribing procedural requirements.

PRIOR BOARD OF PUBLIC UTILITIES REVIEW

Not Applicable.

### ANALYSIS

As part of the rate setting process, the City's Water Department conducts a rate study which analyses the costs of providing water and wastewater services and seeks to apportion those costs appropriately to the City's customers. Any proposed increase in rates for water or wastewater must be noticed in compliance with the requirements adopted as part of Prop 218.

*Kessner v. City of Santa Clara, et al.* is a Proposition 218 water rates challenge filed on behalf of multiple plaintiffs against eighty-two public agencies, including Santa Rosa, which provide retail water services in various jurisdictions around the state of California. On March 4, 2020, the City of Santa Rosa was served with a complaint in the case entitled *Kessner v. the City of Santa Clara, et al.*, filed in the Santa Clara County Superior Court as case number 20CV364054. The complaint seeks to establish a class action on behalf of all the City's retail water customers and alleges that the City's water rates violate Prop 218, which requires retail water utility rates to charge no more than the cost of providing the water service.

The City Attorney's Office proposes to hire outside legal counsel with specific expertise to assist in the defense of this action given the complexity of this area of the law and the fact that challenge alleges a class action suit and will require extensive time and resources. The law firm of Jarvis Fay has the experience and expertise to provide such services to the City of Santa Rosa. The firm will also be representing several of the other named defendants, including the Cities of Petaluma and Napa. This will facilitate some cost sharing among the represented agencies on issues of common concern. The City Attorney's Office will oversee the provision of legal services, including filed documents and billing.

### FISCAL IMPACT

Funds for this expense are included in the Water Department's Fiscal Year 2020-21 budget. Water budgets for professional services yearly and this scope will be covered with the currently planned budget so there are no significant fiscal impacts.

### ENVIRONMENTAL IMPACT

This action is exempt from the provisions of the California Environmental Quality Act (CEQA) under section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and that no further environmental review is required.

### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not Applicable

ATTACHMENTS

Attachment 1 - Proposed Legal Services Agreement

CONTACT

Molly MacLean, Assistant City Attorney, [mmaclean@srcity.org](mailto:mmaclean@srcity.org)

Kimberly Zunino, Deputy Director of Water Administration, [kzunino@srcity.org](mailto:kzunino@srcity.org)