



## Legislation Details (With Text)

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**Title:** District Manager requests approval of and authorization for the Chairperson to sign Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn for Fiscal Year 2022/2023, at an annual cost of \$30,000 for specialized services necessary to advise, assist, and represent the District in its dispute over proper interpretation of the 2013 Area of Origin Settlement Agreement with the California Department of Water Resources (DWR).

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Agreement

Date	Ver.	Action By	Action	Result
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**TO:** Napa County Flood Control and Water Conservation District

**FROM:** Richard Thomasser - District Manager

**REPORT BY:** Sarah Geiss - Staff Services Analyst II

**SUBJECT:** Amendment No. 2 to Agreement No. F-103 Somach, Simmons & Dunn

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### RECOMMENDATION

District Manager requests approval of and authorization for the Chairperson to sign Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn for Fiscal Year 2022/2023, at an annual cost of \$30,000 for specialized services necessary to advise, assist, and represent the District in its dispute over proper interpretation of the 2013 Area of Origin Settlement Agreement with the California Department of Water Resources (DWR).

### EXECUTIVE SUMMARY

Napa County Flood Control and Water Conservation District was harmed by an action of the Department of Water Resources (DWR) revoking 1,208 acre-feet of carryover water in their 2020 Finalization Report. DWR claimed a Water Exchange Transfer Agreement with Alameda County Zone 7 Water Agency nullified the District's unused Table A allocation as carryover for future water deliveries. Outside special water counsel has

represented the District in the on-going and unresolved disagreement with DWR. Amendment No. 2 to Agreement No. F-103 extends the term date and appropriates up to \$30,000 per year for legal fees. A Complaint against DWR has been filed with Sacramento County Superior Court.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fund 8000, Organization 8001500
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Legal analysis for negotiations is needed
Is the general fund affected?	No
Future fiscal impact:	No future fiscal impact
Consequences if not approved:	Staff will not have the benefit of expert legal services to support dispute with DWR

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

Napa County Flood Control and Water Conservation District (Napa), Solano County Water Agency (Solano), and City of Yuba City (Yuba City) (collectively, "NOD 3 Contractors") are in dispute of the California Department of Water Resources' (DWR) Water Year 2020 accounting for the NOD 3 Contractors. Specifically, the NOD 3 Contractors disagree with DWR's interpretation of their respective 2013 Area of Origin (AOO) Settlement Agreements as implemented through the State Water Project (SWP) contract provisions that concern use and carryover of each contractor's unique Table A Allocation provided by their Settlement Agreement. For Water Year 2020, DWR's determinations are documented in its 2020 Finalization Report issued by DWR on January 15, 2021. On February 18, 2021, DWR issued a revised version of the 2020 Finalization Report to Yuba City correcting an accounting error for Yuba City's use of carryover. DWR's flawed determinations resulted in a loss of water in carryover storage for each contractor as follows: Napa: 1,208 acre-feet (AF); Solano: 2,533 AF; and Yuba City: 960 AF; for a total loss of 4,701 AF.

NOD 3 Contractors attempted to resolve the dispute with DWR in 2021. Outside special water counsel, Somach, Simmons & Dunn (SSD) presented arguments to DWR that their interpretation of the AOO Settlement Agreement was flawed and requested 1,208 AF carryover storage be returned to the District as an available water supply class. DWR rejected the District's request. A subsequent rebuttal to DWR's decision was also denied.

On January 14, 2022, SSD filed a claim against DWR with State of California Department of General Services

(DGS). The claim asserts DWR acted wrongfully by stripping the District of 1,208 AF in contractual water supply entitlements resulting in \$745,251 of financial harm. DGS did not respond within its 45 day statutory limit. Once the Government Claim requirement expired and was discharged by DGS, special water counsel proceeded with submitting formal complaint, Napa County Flood Control & Water Conservation District vs State of California Department of Water Resource with Sacramento County Superior Court. A case management conference is set for Friday, March 17, 2023.

Approval of Amendment No. 2 to Agreement No. F-103 with Somach, Simmons & Dunn appropriates up to \$30,000 per year for legal assistance related to the Area of Origin dispute with DWR and unjust loss of carryover water in storage.