



BOARD OF DIRECTORS:  
MARILYN M. TIERNAN  
PRESIDENT

SCOTT R. PASTOR  
VICE PRESIDENT

PAUL SEGER  
JOE KOVALICK  
JASON SHAW

GENERAL MANAGER:  
DANIEL MUEL RATH

GENERAL COUNSEL:  
WESLEY A. MILIBAND

BOARD SECRETARY:  
KAIT KNIGHT

## AGENDA

The Special Meeting of the Board of Directors of Diablo Water District will be held on May 22, 2024 at 6:00 pm at the District's office, 87 Carol Lane, Oakley, California. This meeting is being conducted in person and via webinar. Members of the public and District staff may attend the meeting via conference call / web using the credentials below. Members of the public will continue to have the opportunity to provide public input via the webinar or phone features.

Dial in Number: 1-949-346-1487

Conference ID: 706 156 947#

Or

Web Option: [www.diablowater.org/webmeetings](http://www.diablowater.org/webmeetings)

*Check your browsers' functionality or download the Microsoft Teams App prior to the meeting.*

The District's agendas and supporting documents are available on the District's website: [www.diablowater.org](http://www.diablowater.org), or by calling Kait Knight at (925) 625-6587. A fee may be charged for copies.

If you have a special accommodation needs to attend the meeting, please provide at least two (2) working days' notice prior to the meeting by calling Kait Knight at (925) 625-6587.

**1. Call to Order, Roll Call, and Pledge of Allegiance.**

**2. Public Input.**

Anyone present may address the Board of Directors on any subject within the jurisdiction of Diablo Water District. If the subject item is on this Agenda, please hold public comment until the appropriate item. **All virtual attendees will remain on mute until called upon to address the Board.**

Action Items

**3. District General Counsel.**

Recommendation: Authorize the General Manager to execute an agreement for General Counsel services with Miliband Water Law.

**4. Adjournment.**

*Posted this 20<sup>th</sup> day of May 2024.*



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**Dan Muelrath, General Manager**

**DIABLO WATER DISTRICT**  
May 22, 2024 Board Meeting  
Item Number 3

TO: Each Director

FROM: Dan Muelrath, General Manager

SUBJECT: District General Counsel.

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The District has been notified that our General Counsel has left the firm he previously worked at to start his own law firm. In order to keep continuity of legal services, the General Manager recommends approving a month-to-month contract with Mr. Miliband and his law firm for all current legal items, except labor and human resources items, which will remain with AARLL. This action will allow the Board to provide consideration on how they would like to move forward in the long-term with legal services and keep the District moving forward on critical items that Mr. Miliband is currently working on.

**RECOMMENDATION:**

Authorize the General Manager to execute an agreement for General Counsel services with Miliband Water Law.

*Dan Muelrath*

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Dan Muelrath  
General Manager

Attachment: Legal Services Agreement



## AGREEMENT FOR LEGAL SERVICES

### I. PARTIES

This Agreement for Legal Services (“Agreement”) is entered into by and between the law firm of MILIBAND WATER LAW, hereinafter referred to as “Law Firm” and DIABLO WATER DISTRICT, hereinafter referred to as “Client” or “DWD”.

### II. PURPOSE

Client desires to retain and engage Law Firm to perform legal services on Client’s behalf consisting of General Counsel services and such other services as agreed to in writing between Law Firm and Client, with Wes Miliband of Law Firm being the attorney lead and serving as General Counsel to Client. Law Firm accepts this engagement on the terms and conditions contained in this Agreement.

### III. TERMS AND CONDITIONS

#### A. Fees for Services

##### 1. Standard Hourly Rate Services

Client agrees to pay Law Firm at the following standard hourly rates for General Counsel services and other services unless other rates are agreed to in writing for complex matters or litigation:

Principal/Partners (10+ years experience)	\$305
Senior Associates (7-10 years experience)	\$290
Associates (up to 7 years experience)	\$275
Paralegals/Law Clerks	\$195
Transcriptions	\$ 70

Pursuant and subject to the California Rules of Professional Conduct, Law Firm may staff matters at Law Firm’s discretion including, without limitation, utilization of independent contractors for paralegal, law clerk, or attorney services, so long as ethical and such other circumstances do not prohibit utilization of the specific person sought by Law Firm due to conflicts of interest or such other circumstances. Client will be billed at the hourly rates set forth above, or below in Section III.A.2 if applicable.

## 2. Fee Arrangements for Specialized Legal Services

For litigation and other specialized advisory or transactional services (though not always officially recognized as a “specialty” by the State Bar of California), Client agrees to pay Law Firm at rates higher than the standard hourly rates, if and only if sought by Law Firm and agreed to in writing between Client and Law Firm.

## 3. Costs and Expenses

In addition to the fees described above, Client agrees to pay a three percent (3%) “administrative fee” calculated and based on the total monthly billed fees to cover certain operating expenses of Law Firm incurred in providing services to Client. This administrative fee is in lieu of charging Client for Westlaw, photocopies, automobile mileage, parking, facsimiles, telephone, document preparation, and postage.

Costs relating to fees charged by third parties retained to perform services ancillary to Law Firm’s representation of Client are not included in the administrative fee and are charged separately. These include, but are not limited to, deposition and court reporter fees, transcript costs, witness fees (including expert witnesses), process server fees, and other similar third party fees. Law Firm shall not be obligated to advance costs on behalf of Client; however, for purposes of convenience and in order to expedite matters, Law Firm reserves the right to advance costs on behalf of Client with the prior approval of Client’s designee in the event a particular cost item exceeds \$1,000.00 in amount, and without the prior approval of Client’s designee in the event a particular cost item totals \$1,000.00 or less.

If Law Firm retains, with authorization from Client, experts or outside consultants for the benefit of Client, rather than Client contracting directly with any expert or outside consultant, Client agrees to pay a five percent (5%) “consultant processing fee” in addition to the actual costs paid by Law Firm to the expert or outside consultant if and only if invoices are payable and due to the expert or consultant and Client has not yet paid Law Firm for such invoice that is due and payable to the expert or consultant.

## B. Billing Practices

1. A detailed description of the work performed and the costs and expenses advanced by Law Firm will be prepared on a monthly basis as of the last day of the month and will be submitted to Client on or about the 5th of the following month, unless other arrangements are made. Payment of the full amount due, as reflected on the monthly statement, will be due to Law Firm from Client within 30 days of being submitted to Client, unless other arrangements are made. In the event that there are funds of Client in Law Firm’s Trust Account at the time a monthly billing statement is prepared, funds will be transferred from Law Firm’s Trust Account to Law Firm’s General Account to the extent of the balance due on the monthly statement and a credit will be reflected on the monthly statement. Any balance of fees or costs advanced remaining unpaid for a period of 60 days will be subject to a 1% per month service charge.

2. Law Firm shall bill in one-tenth hour increments. Law Firm shall limit travel time to Client's Board meetings to one-half of round-trip travel, capped at a maximum of 1.5 hours.

3. Client agrees to review Law Firm's monthly statements promptly upon receipt and to notify Law Firm, in writing, with respect to any disagreement with the monthly statement. Failure to communicate written disagreement with Law Firm's monthly statement within thirty (30) days of Client's receipt thereof shall be deemed to signify Client's agreement that the monthly billing statement accurately reflects the services performed and the proper charge for those services.

C. Termination of Representation on a Particular Matter

Law Firm reserves the right to discontinue the performance of legal services on behalf of Client on a particular matter upon the occurrence of any one or more of the following events, subject to the California State Bar's Rules of Professional Conduct:

1. Upon order of a court of law requiring Law Firm to discontinue the performance of legal services;

2. Upon a determination by Law Firm in the exercise of its reasonable and sole discretion, that state or federal legal ethical principles require it to discontinue the performance of legal services;

3. Upon a failure of Client to perform any of Client's obligations with respect to the payment of Law Firm's fees, costs or expenses as reflected on the monthly bill; or

4. Upon a failure of Client to perform any of Client's obligations with respect to the duty of cooperation with Law Firm in connection with Law Firm's representation of Client

In the event that Law Firm ceases to perform services for Client on a matter, Client agrees that it will promptly pay to Law Firm any and all unpaid fees and costs advanced, and retrieve all of its files, signing a receipt therefor. Further, Client agrees that, with respect to any litigation where Law Firm has made an appearance in a court of law on its behalf, Client will promptly execute an appropriate Substitution of Attorney form. Any termination of Law Firm's representation on such a matter may be subject to approval by the applicable court of law.

D. Conflicts of Interest and Consent to Joint Representation

Law Firm has concluded that it currently does not have any conflicts of interest with Client. Law Firm shall evaluate if a potential or actual conflict of interest arises as circumstances warrant and become known to Law Firm.

E. Client Cooperation.

Client agrees to fully cooperate with Law Firm in connection with Law Firm's representation of Client, including but not limited to, conducting public meetings and hearings, attending mandatory court hearings and other appearances, making its employees and officials available when appropriate, and providing accurate information and documentation necessary to enable Law Firm to adequately represent Client.

F. Consent to Law Firm Communication

As part of Law Firm's commitment to client service, Law Firm may send to Client periodic alerts on case developments and legislative changes, and notices, when relevant to services provided, conferences and other training opportunities designed to help Client with daily legal concerns. Law Firm will send those and other additional service notices to Client via electronic mail at the email address which Client designates or the email used in Client's communications with Law Firm. By execution of this Agreement, Client and designated contact(s) consent to receive such communications by electronic mail subject to the right to unsubscribe at any time.

G. Identification of Insurance Coverage

With respect to insurance coverage for any matters covered by the scope of services under this Agreement, Client agrees that it is Client's own responsibility, rather than Law Firm's responsibility, to identify potential insurance coverage and to tender legal matters to any appropriate insurance companies that may insure Client. If Client desires that Law Firm become involved in identifying potential insurers and/or the tender of legal disputes, then a separate written agreement between Client and Law Firm to that effect will be required.

H. Miscellaneous

1. Law Firm maintains errors and omissions insurance coverage applicable to the services to be rendered.

2. The parties to this Agreement agree that Law Firm, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of Client.

3. After a file on a matter is closed, Client has a right to request Law Firm to return the file to Client. Absent such a request, Law Firm shall retain the file on Client's behalf in accordance with applicable rules and/or customs and practices of licensed attorneys in the State of California.

IV. BINDING ARBITRATION

If any dispute arises out of, or related to, a claimed breach of this agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type, or description, regardless of the facts or the legal theories which may be involved, including attorney malpractice, breach of fiduciary duty, misrepresentation, or conflict of interest, such dispute shall be resolved by confidential, good-faith efforts by the parties, first by the parties engaging with each other directly and if either party is unwilling or the efforts fail to resolve the dispute, the parties will then attempt mediation by a mutually-agreed to mediator, and if that effort is unsuccessful, then the parties agree to binding arbitration upon the written request of one party after service of that request on the other party.

There are significant advantages and disadvantages of binding arbitration. The parties shall agree on an arbitrator with special skills and experience to hear and determine the dispute unlike in a court proceeding where a judge is assigned. If the parties cannot agree, then the Superior Court of Sacramento County shall choose an impartial arbitrator whose decision shall be final and conclusive on all matters.

The parties shall each have the right of discovery in accordance with Code of Civil Procedure Section 1283. Arbitrations conducted pursuant to this agreement permit the same discovery rights as in a court proceeding. Each party shall bear their own costs and attorney fees, including payments to the arbitrator which can be significantly more costly than the filing fee in Court proceedings where costs may be awarded to the prevailing party. Each party to this agreement waives and therefore gives up important constitutional rights in arbitration as the arbitrator's decision is final. There is no right to appeal to challenge any errors made in the arbitration proceeding. Unlike court proceedings, arbitration proceedings are conducted privately and the outcome will remain confidential. There is no right to a trial by a judge or jury of one's peers. There is no limitation on the type of monetary damage that can be awarded by the arbitrator. The client is advised that the client has the right to have an independent lawyer of client's choice review this arbitration provision.

V. DURATION

This Agreement shall commence as of May 22, 2024 and continue from month to month at the then current rate schedules until modified in writing by agreement between Law Firm and Client.

Either Client or Law Firm may terminate this Agreement on thirty (30) days' written notice.

"Law Firm"

MILIBAND WATER LAW

Dated: May 20, 2024

By:



\_\_\_\_\_  
Wes Miliband, Principal

"DWD"

DIABLO WATER DISTRICT

Dated: \_\_\_\_\_

By:

\_\_\_\_\_  
Dan Muelrath, General Manager