

# The Metropolitan Water District of Southern California

# Agenda

The mission of the Metropolitan Water District of Southern California is to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

## L&C Committee

M. Luna, Chair  
J. Garza, Vice Chair  
M. Camacho  
G. Cordero  
L. Dick  
C. Douglas  
C. Kurtz  
T. McCoy  
C. Miller  
G. Peterson  
M. Ramos  
K. Seckel

## **Legal and Claims Committee - Final - Revised 1**

Meeting with Board of Directors \*

**May 13, 2024**

**1:00 p.m.**

Agendas, live streaming, meeting schedules, and other board materials are available here: <https://mwdh2o.legistar.com/Calendar.aspx>. If you have technical difficulties with the live streaming page, a listen-only phone line is available at 1-877-853-5257; enter meeting ID: 862 4397 5848. Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 815 2066 4276 or click <https://us06web.zoom.us/j/81520664276pwd=a1RTQWh6V3h3ckFhNmdsUWpKR1c2Zz09>

## Monday, May 13, 2024 Meeting Schedule

09:00 a.m. EOT  
11:00 a.m. LEG  
12:30 p.m. Break  
01:00 p.m. Legal  
02:30 p.m. OWS

MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

Teleconference Locations:

525 Via La Selva • Redondo Beach, CA 90277

Cedars Sinai Medical Center • 8700 Beverly Blvd • Los Angeles, CA 90048

Conference Room • 1545 Victory Blvd. 2nd Floor • Glendale, CA 9120

\* The Metropolitan Water District's meeting of this Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to this Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to this Committee will not vote on matters before this Committee.

**1. Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))**

**2. MANAGEMENT ANNOUNCEMENTS AND HIGHLIGHTS**

A. General Counsel's report of monthly activities

[21-3311](#)

**Attachments:** [05142024 BOD 2A Report](#)

**\*\* CONSENT CALENDAR ITEMS -- ACTION \*\***

### 3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Legal and Claims Committee for April 9, 2024 (Copies have been submitted to each Director, any additions, corrections, or omissions) [21-3312](#)

**Attachments:** [05142024 LC 3A \(04092024\) Minutes](#)

### 4. CONSENT CALENDAR ITEMS - ACTION

- 7-6 Authorize contracts for Bond Counsel services with Anzel Galvan LLP; Hawkins Delafield & Wood LLP, Katten Muchin Rosenman LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP; Co-Bond Counsel services with Amira Jackmon and Law Offices of Alexis S.M. Chiu; and Disclosure Counsel services with Stradling Yocca Carlson & Rauth, P.C. for the period ending June 30, 2027; the General Manager has determined that this action is exempt or otherwise not subject to CEQA [21-3344](#)

**Attachments:** [05142024 LC 7-6 B-L](#)  
[05142024 LC 7-6 Presentation](#)

**\*\* END OF CONSENT CALENDAR ITEMS \*\***

### 5. OTHER BOARD ITEMS - ACTION

- 8-5 Receive report on litigation in In re: Aqueous Film-Forming Foams Products Liability Litigation, Master Docket No.: 2:18-mn-2873-RMG, and settlements in: (1) City of Camden, et al. v. 3M Company, Civil Action No.: 2:23-cv-03147-RMG; and (2) City of Camden, et al. v. E.I. DuPont de Nemours and Company (n/k/a EIDP, Inc.), et al., Civil Action No.: 2:23-cv-03230-RMG; and provide direction on response to proposed settlements in: (1) City of Camden, et al. v. Tyco Fire Products LP, et al., Civil Action No.: 2:24-cv-02321-RMG; and (2) other future cases; and authorize an increase in maximum amount payable under contract for legal services with Marten Law LLP in the amount of \$150,000 for a total amount not to exceed \$550,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation; may be heard in closed session pursuant to Government Code Section 54956.9(d)(1)]. [SUBJECT REVISED 5/8/2024] [21-3345](#)

### 6. BOARD INFORMATION ITEMS

NONE

**7. COMMITTEE ITEMS**

- a. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282 , CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014, 2016, and 2018 actions; and the appeals of the 2014, 2016, and 2018 actions, Court of Appeal for the First Appellate District Case No. A170156 [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] [21-3373](#)

**8. FOLLOW-UP ITEMS**

NONE

**9. FUTURE AGENDA ITEMS**

**10. ADJOURNMENT**

**NOTE: This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Committee agendas may be obtained on Metropolitan's Web site <https://mwdh2o.legistar.com/Calendar.aspx>. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.**

**Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site <https://mwdh2o.legistar.com/Calendar.aspx>.**

**Requests for a disability-related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.**



## Metropolitan Cases

### State Water Project Contract Extension Litigation (Sacramento Superior Court)

On April 17, 2024, the California Supreme Court denied all petitions seeking review of the decision issued earlier this year by Third District Court of Appeal, which affirmed the validity of the State Water Project (SWP) Contract Extension Amendments (Amendments). As a result, all litigation challenging these Amendments has been concluded.

As previously reported, various environmental groups asserted a panoply of claims challenging the Amendments, most of which centered around alleged violations of CEQA, the Delta Reform Act and the Public Trust Doctrine. On January 5, 2024, the Court of Appeal issued a detailed 50-page opinion rejecting all of them. With respect to the CEQA claims, the court agreed that the Amendments were largely financial in nature and

that the extension of the SWP Contract would not, in and of itself, alter the way the SWP was operated or maintained. With respect to the Delta Reform Act claims, the court held that approval of the Amendments did not constitute a “covered action” requiring certification of consistency with the Delta Plan. Lastly, with respect to the Public Trust Doctrine claims, the court agreed that these Amendments would not have an impact on water that “is imbued with the public trust.”

Among other things, the Amendments extend the SWP contracts to 2085 and make certain changes to their financial provisions aimed at maintaining and improving the SWP’s fiscal integrity and management. The California Department of Water Resources is now working to implement these changes including, most notably, a new “pay go” system that should make the billing and accounting process for SWP costs much simpler and more transparent.

## Matters Impacting Metropolitan

### California Adopts New Drinking Water Standard for Hexavalent Chromium

On April 17, 2024, California’s State Water Resources Control Board (State Water Board) unanimously approved a new maximum contaminant level (MCL) of 10 parts per billion (ppb) for hexavalent chromium. If approved by the Office of Administrative Law, the MCL will take effect on October 1, 2024. The timing for when water suppliers will be required to comply with the MCL is based on their number of service connections:

Number of Service Connections	Compliance Dates
10,000 or more	2 years after regulation takes effect
1,000 to 9,999	3 years after regulation takes effect
Fewer than 1,000	4 years after regulation takes effect

This is the second time that California has established an MCL for hexavalent chromium. The state first set an MCL of 10 ppb for hexavalent chromium in 2014, but the Sacramento County Superior Court invalidated the MCL in 2017,

finding that the regulation “failed to properly consider the economic feasibility of complying with the MCL.” California is the only state to set its own MCL for hexavalent chromium and previously set an MCL of 50 ppb for total chromium that was lower than the federal total chromium MCL of 100 ppb. For more information about the State Water Board’s rulemaking process for hexavalent chromium, see [https://www.waterboards.ca.gov/drinking\\_water/certification/drinkingwater/SWRCBDDW-21-003\\_hexavalent\\_chromium.html](https://www.waterboards.ca.gov/drinking_water/certification/drinkingwater/SWRCBDDW-21-003_hexavalent_chromium.html).

### California Adopts Public Health Goals for PFOA and PFOS

On April 5, 2024, the Office of Environmental Health Hazard Assessment (OEHH) of the California Environmental Protection Agency adopted Public Health Goals (PHGs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) in drinking water of 0.007 parts per trillion (ppt) and 1 ppt, respectively. A PHG is the level of a drinking water contaminant at which adverse health effects are not expected to



occur from a lifetime of exposure. Although PHGs are non-enforceable advisory levels, California’s State Water Resources Control Board (State Water Board) will use the PHGs to develop drinking water standards (Maximum Contaminant Levels, or MCLs) for PFOA and PFOS. The State Water Board must set MCLs as close to the PHGs as possible while also considering the technological and economic feasibility of complying with the MCLs, placing primary emphasis on the protection of public health. As explained in this report, EPA recently set Maximum Contaminant Level Goals (non-enforceable health-based goals) for PFOA and PFOS at zero and enforceable MCLs for both PFOA and PFOS at 4.0 ppt. California’s MCLs are required to be at least as stringent as EPA’s MCLs. Because California has not yet set MCLs for PFOA and PFOS, the new federal MCLs will apply to California public water systems in the meantime.

### EPA Designates PFOA and PFOS as CERCLA Hazardous Substances

On April 19, 2024, the U.S. Environmental Protection Agency (EPA) announced a Final Rule designating two of the most common PFAS—PFOA and PFOS, including their salts and structural isomers—as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This means CERCLA’s retroactive, strict, and joint and several liability could apply to current owners and operators of facilities contaminated with PFOA or PFOS; past owners and operators of facilities at the time of a PFOA or PFOS release; persons who “arranged for disposal” or treatment of PFOA or PFOS; and certain transporters of these substances. Furthermore, facilities must report releases of PFOA or PFOS at or above the reportable quantity of one pound within any 24-hour period.

Along with the Final Rule, EPA released a PFAS Enforcement Discretion and Settlement Policy (Enforcement Policy) which states EPA’s intention to focus its CERCLA enforcement efforts on significant contributors of PFAS in the environment (e.g., manufacturers of PFAS, federal facilities, and “other industrial parties.”) The Enforcement Policy clarifies EPA’s intent not to pursue certain parties such as farmers, municipal landfills, community water systems, publicly owned airports, or local fire departments, where equitable factors do not support seeking cleanup costs. Also, when appropriate, EPA can enter into settlements with these parties which will protect them from third

party claims. However, the Enforcement Policy only applies to EPA actions brought under CERCLA and does not prevent private parties from seeking to recover their costs related to PFOA and PFOS under other federal and state laws when EPA is not involved. The Final Rule will be effective 60 days after publication in the Federal Register. Please see EPA’s attached “Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA” for more information.



EPA’s Questions and Answers about Designation of PFOA and PFOS as Hazardous Substances under CERCLA



EPA’s PFAS Enforcement Discretion and Settlement Policy Under CERCLA

### EPA Publishes Final National Primary Drinking Water Standards for Six PFAS

On April 26, 2024, EPA published in the Federal Register a final rule under the Safe Drinking Water Act setting enforceable limits for six PFAS in drinking water. The rule sets a maximum contaminant level (MCL) of 4 parts per trillion (ppt) each for the two most studied PFAS –PFOA and PFOS, and an MCL of 10 ppt each for HFPO-DA (commonly referred to as GenX chemicals), PFNA, and PFHxS. The rule also regulates any mixture of two or more of HFPO-DA, PFNA, PFHxS, and PFBS using a hazard index approach of 1 as an MCL (see EPA’s attached PFAS National Primary Drinking Water Regulation FAQs for Drinking Water Primacy Agencies for more information). Regulated public water systems have three years to complete their initial monitoring for these chemicals. Systems must include their results in their Annual Water Quality Reports (a.k.a. Consumer Confidence Reports (CCRs)) to customers starting in three years. Systems that detect PFAS above the new standards will have five years to comply with the new MCLs. Water systems must also notify the public if levels of regulated PFAS exceed these new standards. Publishing of the final rule triggered a 45-day window to file a lawsuit challenging the regulation. The rule will become effective June 25, 2024 (i.e., 60 days after the rule was published).



EPA’s PFAS National Primary Drinking Water Regulation FAQs for Drinking Water Primacy Agencies



### CBR Tax Initiative

The California Business Roundtable has qualified an initiative for the November 2024 ballot, called the Taxpayers Protection and Government Accountability Act. The initiative proposes to amend the California constitution to place broad and wide-reaching restrictions on the adoption of all taxes, fees, and charges by all state and local agencies in California. The initiative, if passed, would apply retroactively to all taxes, fees, or charges passed since January 1, 2022.

As to the state, the initiative would require all taxes adopted by the legislature to also be approved by voters throughout the state. All state and local charges or taxes would be subject to new requirements, including documentation of “actual cost”, even though taxes and charges are normally based on projected future rates. Additionally, one initiative requires those charges and taxes must be adopted by the legislative bodies and cannot be delegated to administrative agencies. If any charge or tax is challenged in court, the burden of

proof would now be heightened to a “clear and convincing” standard.

The California Legislature filed a petition for review directly with the California Supreme Court, requesting that the court invalidate the initiative before it is placed on the ballot. On November 26, 2023, the Court accepted the case and issued an order to show cause regarding the following issues: (1) Does the initiative constitute an impermissible attempted revision of the California Constitution by voter initiative?; and (2) Is the initiative measure subject to invalidation on the ground that, if adopted, it would impair essential government functions?

The case has been fully briefed and nearly 100 parties filed amicus briefs, including Association of California Water Agencies (ACWA) and California Special Districts Association (CSDA). The Court has set oral arguments for May 8, 2024, at 1:30 p.m. The Court has no specific deadline to issue a decision following the oral arguments.

## Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	3	Claims relating to: (1) reported injuries from falling on a broken utility vault cover in the city of Corona; and (2) two motor vehicle accidents involving MWD vehicles	
Subpoenas	2	(1) Deposition Subpoena for Production of Business Records, served by the plaintiff, in the case Thomas P. Fuhrman v. City of Menifee, Los Angeles County Superior Court, Case No. CVSW2310000, requesting any documents from January 1, 1960, to the present pertaining to Mr. Fuhrman, the real property located at 30701 Lyon Avenue in Hemet, and/or the real property known as "The Wooden Nickel Ranch" located at 25690 Holland Road in Menifee; and (2) Subpoena for employment-related records relating to matter before the Workers' Compensation Appeals Board by a temporary worker	
Requests Pursuant to the Public Records Act	18	<u>Requestor</u>	<u>Documents Requested</u>
		Association of Confidential Employees (ACE)	Documents for the period January 1, 2012, to date relating to PERB unfair practice charges and grievances filed by ACE against MWD
		California Energy Commission	GIS data showing MWD's boundaries
		Student, California State University San Marcos	Number of participants in the Turf Replacement Program and demographic information about the participants



<u>Requestor</u>	<u>Documents Requested</u>
City of Claremont, Recreation and Human Services Department	Easement that permits vehicle access to MWD's property adjacent to the Thompson Creek Trail in Claremont
Datum Tech	Scoring and contract documents relating to the Request for Proposal for Multimedia Placement Consulting Services for Water Awareness and Outreach Campaign
FedTec	Proposal documents and budget/spending on the contract for On-Call Information Technology Services
Jacobs	Lake Mathews Forebay PCS and Bypass reports and reports relating to Lake Mathews electrical upgrade
Los Cerritos Community News	Documents showing the increase in MWD water rates that were recently approved by the Board
Mott MacDonald	Lake Mathews Forebay PCS and Bypass Reports and winning proposals submitted for (1) the Pure Water Southern California program; (2) feasibility studies and detailed investigations for potential east-west conveyance facility; and (3) preliminary investigations for the West Area Water Supply Reliability Improvements and owner's advisor services for progressive design build of the Sepulveda Feeder Pump Station
Nelson Mullins Riley & Scarborough	Documents for the period 1986-2016 relating to asbestos-related training courses taken by a certain former MWD employee and projects that the former employee worked on that involved asbestos
Pro Engineering Consulting (2 requests)	Data on water pressure to properties in Winchester and Commerce
Graduate Student, San Diego State University	Annual water quality reports dated before 2017 through the present covering the period before and after the Woolsey fire
The Sax Agency	Scoring sheet for proposals submitted in response to Request for Proposal for Multimedia Placement Consulting Services for Water Awareness and Outreach Campaign



		<u>Requestor</u>	<u>Documents Requested</u>
		Sensis	Scoring sheets and winning proposal for the Request for Proposal for Multimedia Placement Consulting Services for Water Awareness and Outreach Campaign
		Transparent California	MWD Employee Compensation Report for 2023
		West Yost	Modeling data for projected salinity concentrations in the Colorado River through 2040
Other Matters	1	Letter from the California Department of Industrial Relations, Labor Commissioner's Office, Retaliation Complaint Investigation Unit stating that this office received an Equal Pay Act complaint regarding the wages and/or working conditions of employees at MWD. Although the letter requires that MWD keep and maintain any relevant records, a copy of the complaint was not provided	



PLEASE NOTE

- ADDITIONS ONLY IN THE FOLLOWING TWO TABLES WILL BE SHOWN IN RED.
- ANY CHANGE TO THE *OUTSIDE COUNSEL AGREEMENTS* TABLE WILL BE SHOWN IN REDLINE FORM (I.E., ADDITIONS, REVISIONS, DELETIONS).





<b>Bay-Delta and SWP Litigation</b>	
<b>Subject</b>	<b>Status</b>
<p><b>Delta Conveyance Project CEQA Cases</b></p> <p><i>City of Stockton v. California Department of Water Resources</i></p> <p><i>County of Butte v. California Department of Water Resources</i></p> <p><i>County of Sacramento v. California Department of Water Resources</i></p> <p><i>County of San Joaquin et al. v. California Department of Water Resources</i></p> <p><i>Sacramento Area Sewer District v. California Department of Water Resources</i></p> <p><i>San Francisco Baykeeper, et al. v. California Department of Water Resources</i></p> <p><i>Sierra Club, et al. v. California Department of Water Resources</i></p> <p><i>South Delta Water Agency and Rudy Mussi Investment L.P. v. California Department of Water Resources</i></p> <p><i>Tulare Lake Basin Water Storage District v. California Department of Water Resources</i></p> <p><u>Sacramento County Superior Ct.</u> (Judge Acquisti)</p>	<ul style="list-style-type: none"> <li>• DWR is the only named respondent/defendant</li> <li>• All alleged CEQA violations</li> <li>• Most allege violations of the Delta Reform Act, Public Trust Doctrine and Delta and Watershed Protection Acts</li> <li>• Two allege violations of the fully protected bird statute</li> <li>• One alleges violations of Proposition 9 (1982) and the Central Valley Project Act</li> <li>• Second case management conference <u>and hearing on motion for preliminary injunction re geotechnical work</u> set for May 31, 2024</li> <li>• Deadline for DWR to prepare the administrative record extended to June 14, 2024</li> </ul>
<p><b><u>Delta Conveyance Project Water Right Permit Litigation</u></b></p> <p><u><i>Central Delta Water Agency et al. v. State Water Resources Control Board</i></u></p> <p><u>Fresno County Superior Court</u> (Judge TBD)</p>	<ul style="list-style-type: none"> <li>• <u>Complaint filed April 16, 2024 alleges that the State Water Board must rule on DWR's 2009 petition to extend the time to perfect its State Water Project rights before the State Water Board may begin to adjudicate DWR's petition to change its water rights to add new points of diversion for the Delta Conveyance Project</u></li> </ul>
<p><b>Consolidated DCP Revenue Bond Validation Action and CEQA Case</b></p> <p><i>Sierra Club, et al. v. California Department of Water Resources</i> (CEQA, designated as lead case)</p> <p><i>DWR v. All Persons Interested</i> (Validation)</p>	<ul style="list-style-type: none"> <li>• <b>Validation Action</b></li> <li>• Final Judgment and Final Statement of Decision issued January 16, 2024 <u>ruling the bonds are not valid</u></li> </ul>



Subject	Status
<p>Sacramento County Superior Ct. (Judge Kenneth C. Mennemeier)</p> <p>3d District Court of Appeal Case No. C100552</p>	<ul style="list-style-type: none"> <li>• DWR, Metropolitan and other supporting public water agencies filed Notices of Appeal on or before the February 16, 2024 deadline</li> <li>• Eight opposing groups filed Notices of Cross Appeals by March 27, 2024</li> <li>• <a href="#">April 16, 2024 DWR moved to dismiss the cross appeals as untimely</a></li> <li>• <a href="#">May 1, 2024 deadline to file oppositions to motion to dismiss cross appeals</a></li> </ul>
<p><b>SWP-CVP 2019 BiOp Cases</b></p> <p><i>Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Raimondo, et al. (PCFFA)</i></p> <p><i>Calif. Natural Resources Agency, et al. v. Raimondo, et al. (CNRA)</i></p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Thurston)</p>	<ul style="list-style-type: none"> <li>• SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases</li> <li>• Federal defendants reinitiated consultation on Oct 1, 2021</li> <li>• March 28, 2024 order extending the Interim Operations Plan and the stay of the cases through the issuance of a new Record of Decision or December 20, 2024, whichever is first</li> </ul>
<p><b>CESA Incidental Take Permit Cases</b></p> <p><b>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</b></p> <p><i>Metropolitan &amp; Mojave Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors &amp; Kern County Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al. (CESA/CEQA)</i></p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)</i></p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p>	<ul style="list-style-type: none"> <li>• <a href="#">Administrative records certified in October 2023</a></li> <li>• Parties are conferring on a merits briefing schedule</li> </ul>



Subject	Status
<p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA)</p>	
<p><b>CDWR Environmental Impact Cases</b> <b>Sacramento Superior Ct. Case No. JCCP 4942,</b> <b>3d DCA Case No. C100302</b> <b>(20 Coordinated Cases)</b></p> <p>Validation Action <i>DWR v. All Persons Interested</i></p> <p>CEQA 17 cases</p> <p>CESA/Incidental Take Permit 2 cases</p> <p>(Judge Arguelles)</p>	<ul style="list-style-type: none"> <li>• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit</li> <li>• January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety</li> <li>• May 11, 2022, court of appeal reversed the trial court’s denial of attorney fees and costs</li> <li>• Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal’s opinion</li> <li>• Dec. 26, 2023 order denying fee motions</li> <li>• <del>Feb. 26, 2024 deadline to file notice of appeal</del></li> <li>• Six notices of appeal filed</li> </ul>
<p><b>COA Addendum/ No-Harm Agreement</b></p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Rockwell)</p>	<ul style="list-style-type: none"> <li>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</li> <li>• Westlands Water District and North Delta Water Agency granted leave to intervene</li> <li>• Metropolitan &amp; SWC monitoring</li> <li>• Deadline to prepare administrative record last extended to Nov. 18, 2022</li> </ul>
<p><b>Water Management Tools Contract Amendment</b></p> <p><i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Aquisto)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Aquisto)</p>	<ul style="list-style-type: none"> <li>• Filed September 28, 2020</li> <li>• CWIN and Aqualliance allege one cause of action for violation of CEQA</li> <li>• NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief</li> <li>• SWC motion to intervene in both cases granted</li> <li>• Dec. 20, 2022 DWR filed notice of certification of the administrative record and filed answers in both cases</li> </ul>



<b><i>San Diego County Water Authority v. Metropolitan, et al.</i></b>		
<b>Cases</b>	<b>Date</b>	<b>Status</b>
<b>2014, 2016</b>	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	April 23	SDCWA filed answers to Metropolitan’s cross-complaints.
	Sept. 30	Based on the Court of Appeal’s Sept. 21 opinion (described above), and the Board’s Sept. 28 authorization, Metropolitan paid \$35,871,153.70 to SDCWA for 2015-2017 Water Stewardship Rate charges under the Exchange Agreement and statutory interest.
<b>2017</b>	July 23, 2020	Dismissal without prejudice entered.
<b>2018</b>	April 21, 2021	SDCWA filed second amended petition/complaint.
	July 29	Metropolitan filed answer to the second amended petition/complaint and cross-complaint against SDCWA for declaratory relief and reformation.
	Aug. 31	SDCWA filed answer to Metropolitan’s cross-complaint.
	April 11, 2022	Court entered order of voluntary dismissal of parties’ WaterFix claims and cross-claims.
<b>2014, 2016, 2018</b>	June 11, 2021	Deposition of non-party witness.
	Aug. 25	Hearing on Metropolitan’s motion for further protective order regarding deposition of non-party witness.
	Aug. 25	Court issued order consolidating the 2014, 2016, and 2018 cases for all purposes, including trial.
	Aug. 30	Court issued order granting Metropolitan’s motion for a further protective order regarding deposition of non-party witness.
	Aug. 31	SDCWA filed consolidated answer to Metropolitan’s cross-complaints in the 2014, 2016, and 2018 cases.
	Feb. 22	Metropolitan and SDCWA each filed motions for summary adjudication.
	April 13	Hearing on Metropolitan’s and SDCWA’s motions for summary adjudication.
	May 4	Court issued order granting Metropolitan’s motion for summary adjudication on cross-claim for declaratory relief that the conveyance facility owner, Metropolitan, determines fair compensation, including any offsetting benefits; and denying its motion on certain other cross-claims and an affirmative defense.



Cases	Date	Status
<b>2014, 2016, 2018 (cont.)</b>	May 11	Court issued order granting SDCWA’s motion for summary adjudication on cross-claim for declaratory relief in the 2018 case regarding lawfulness of the Water Stewardship Rate’s inclusion in the wheeling rate and transportation rates in 2019-2020; certain cross-claims and affirmative defenses on the ground that Metropolitan has a duty to charge no more than fair compensation, which includes reasonable credit for any offsetting benefits, with the court also stating that whether that duty arose and whether Metropolitan breached that duty are issues to be resolved at trial; affirmative defenses that SDCWA’s claims are untimely and SDCWA has not satisfied claims presentation requirements; affirmative defense in the 2018 case that SDCWA has not satisfied contract dispute resolution requirements; claim, cross-claims, and affirmative defenses regarding applicability of Proposition 26, finding that Proposition 26 applies to Metropolitan’s rates and charges, with the court also stating that whether Metropolitan violated Proposition 26 is a separate issue; and cross-claims and affirmative defenses regarding applicability of Government Code section 54999.7, finding that section 54999.7 applies to Metropolitan’s rates. Court denied SDCWA’s motion on certain other cross-claims and affirmative defenses.
	May 13	Pre-trial conference; court denied Metropolitan’s motions in limine.
	May 16-27	Trial occurred but did not conclude.
	May 23, June 21	SDCWA filed motions in limine.
	May 26, June 24	Court denied SDCWA’s motions in limine.
	June 3, June 24, July 1	Trial continued, concluding on July 1.
	June 24	SDCWA filed motion for partial judgment.
	July 15	Metropolitan filed opposition to motion for partial judgment.
	Aug. 19	Post-trial briefs filed.
	Sept. 14	Court issued order granting in part and denying in part SDCWA’s motion for partial judgment (granting motion as to Metropolitan’s dispute resolution, waiver, and consent defenses; denying motion as to Metropolitan’s reformation cross-claims and mistake of fact and law defenses; and deferring ruling on Metropolitan’s cost causation cross-claim).
	Sept. 21	Metropolitan filed response to order granting in part and denying in part SDCWA’s motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).



Cases	Date	Status
<b>2014, 2016, 2018 (cont.)</b>	Sept. 22	SDCWA filed objection to Metropolitan’s response to order granting in part and denying in part SDCWA’s motion for partial judgment.
	Sept. 27	Post-trial closing arguments.
	Oct. 20	Court issued order that it will rule on SDCWA’s motion for partial judgment as to Metropolitan’s cost causation cross-claim simultaneously with the trial statement of decision.
	Dec. 16	Parties filed proposed trial statements of decision.
	Dec. 21	SDCWA filed the parties’ stipulation and proposed order for judgment on Water Stewardship Rate claims for 2015-2020.
	Dec. 27	Court entered order for judgment on Water Stewardship Rate claims for 2015-2020 as proposed by the parties.
	March 14, 2023	Court issued tentative statement of decision (tentatively ruling in Metropolitan’s favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan’s favor)
	March 14	Court issued amended order granting in part and denying in part SDCWA’s motion for partial judgment (ruling that Metropolitan’s claims for declaratory relief regarding cost causation are not subject to court review).
	March 29	SDCWA filed objections to tentative statement of decision
	April 3	Metropolitan filed response to amended order granting in part and denying in part SDCWA’s motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	April 25	Court issued statement of decision (ruling in Metropolitan’s favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan’s favor)
	Jan. 10, 2024	Parties filed joint status report and stipulated proposal on form of judgment
	Jan. 17	Court issued order approving stipulated proposal on form of judgment (setting briefing and hearing)
	April 3	Court entered final judgment
	April 3	Court issued writ of mandate regarding demand management costs
	April 3	SDCWA filed notice of appeal
	<a href="#"><u>April 17</u></a>	<a href="#"><u>Metropolitan filed notice of cross-appeal</u></a>
	<a href="#"><u>July 18</u></a>	<a href="#"><u>Hearing on prevailing party</u></a>



Cases	Date	Status
<b>All Cases</b>	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.
	April 27	SDCWA served notice of deposition of non-party witness.
	May 13-14	Metropolitan filed motions to quash and for protective order regarding deposition of non-party witness.
	June 4	Ruling on motions to quash and for protective order.



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Albright, Yee & Schmit, APC	Employment Matter	211923	05/23	\$60,000
Andrade Gonzalez LLP	MWD v. DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	\$250,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	\$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	<del>\$1,316,937</del> <del>1,277,187</del>
	Delta Conveyance Project Bond Validation-CEQA Litigation	185899	09/21	\$250,000
	MWD Drone and Airspace Issues	193452	08/20	\$50,000
	AFSCME Local 1902 in Grievance No. 1906G020 (CSU Meal Period)	201883	07/12/21	\$30,000
	AFSCME Local 1902 v. MWD, PERB Case No. LA-CE-1438-M	201889	09/15/21	\$20,000
	MWD MOU Negotiations**	201893	10/05/21	\$100,000
<u>BDG Law Group, APLC</u>	<u>Gutierrez v. MWD</u>	<u>216054</u>	<u>03/24</u>	<u>\$100,000</u>
Best, Best & Krieger	Bay-Delta Conservation Plan/Delta Conveyance Project (with SWCs)	170697	08/17	\$500,000
	Environmental Compliance Issues	185888	05/20	\$100,000
	Grant Compliance Issues	211921	05/23	\$75,000
	Pure Water Southern California	207966	11/22	\$100,000
	<u>Progressive Design Build</u>	<u>216053</u>	<u>04/24</u>	<u>\$250,000</u>
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	\$50,000





Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Burke, Williams & Sorensen, LLP	Real Property – General	180192	01/19	\$100,000
	Labor and Employment Matters	180207	04/19	\$75,000
	General Real Estate Matters	180209	08/19	\$200,000
	Rancho Cucamonga Condemnation Actions (Grade Separation Project)	207970	05/22	\$100,000
Law Office of Alexis S.M. Chiu*	Bond Counsel	200468	07/21	N/A
Cislo & Thomas LLP	Intellectual Property	170703	08/17	\$100,000
Curls Bartling P.C.*	Bond Counsel	200470	07/21	N/A
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	\$615,422
Duncan, Weinberg, Genzer & Pembroke	Power Issues	6255	09/95	\$3,175,000
Ellison, Schneider, Harris & Donlan	Colorado River Issues	69374	09/05	\$175,000
	Issues re SWRCB	84457	06/07	\$200,000
Erin Joyce Law, PC	Employment Matter	216039	11/23	\$100,000
Greines, Martin, Stein & Richland LLP	SDCWA v. MWD	207958	10/22	\$100,000
	Colorado River Matters	207965	11/22	\$100,000
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	\$50,000
Hanna, Brophy, MacLean, McAleer & Jensen, LLP	Workers' Compensation	211926	06/23	\$200,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	\$1,100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
	Finance Advice	158024	12/16	\$100,000
	Deferred Compensation/HR	170706	10/17	\$500,000
	Tax Issues	180200	04/19	\$50,000
	Alternative Project Delivery (ADP)	207961	10/22	\$250,000
	Ad Valorem Property Taxes	216042	11/23	\$100,000
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
Hemming Morse, LLP	Baker Electric v. MWD	211933	08/23	\$100,000
Horvitz & Levy	SDCWA v. MWD	124100	02/12	\$1,250,000
	General Appellate Advice	146616	12/15	\$200,000
	Colorado River	203464	04/22	\$100,000
	Delta Conveyance Bond Validation Appeal	216047	03/24	\$25,000
	PFAS Multi-District Litigation – Appeal	216050	03/24	<del>\$200,000</del> <del>\$100,000</del>
Innovative Legal Services, P.C.	Employment Matter	211915	01/19/23	\$125,000
Internet Law Center	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	\$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	\$100,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance	137992	02/14	\$45,000
Jones Hall, A Professional Law Corp*	Bond Counsel	200465	07/21	N/A
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$250,000
Kutak Rock LLP	Delta Islands Land Management	207959	10/22	\$10,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$229,724
	FLSA Audit	180199	02/19	\$50,000
	EEO Advice	216041	12/23	\$100,000
<u>Lieff Cabraser Heimann &amp; Bernstein, LLP</u>	<u>PFAS Multi-District Litigation</u>	<u>216048</u>	<u>03/24</u>	<u>\$100,000</u>
Manatt, Phelps & Phillips	SDCWA v. MWD rate litigation	146627	06/16	\$4,400,000
	Raftelis-Subcontractor of Manatt, Agr. #146627: Per 5/2/22 Engagement Letter between Manatt and Raftelis, MWD paid Raftelis Financial Consultants, Inc.	Invoice No. 23949		\$56,376.64 for expert services & reimbursable expenses in SDCWA v. MWD
Marten Law LLP	PFAS Multi-District Litigation	216034	09/23	\$400,000
Meyers Nave Riback Silver & Wilson	Pure Water Southern California	207967	11/22	\$100,000
	PFAS Compliance Issues	207968	11/14/22	\$100,000
Miller Barondess, LLP	SDCWA v. MWD	138006	12/14	\$600,000
Morgan, Lewis & Bockius	SDCWA v. MWD	110226	07/10	\$8,750,000
	Project Labor Agreements	200476	04/21	\$100,000
Musick, Peeler & Garrett LLP	Colorado River Aqueduct Electric Cables Repair/Contractor Claims	193461	11/20	\$2,500,000
	Arvin-Edison v. Dow Chemical	203452	01/22	\$100,000
	Semitropic TCP Litigation	207954	09/22	\$75,000
Nixon Peabody LLP*	Bond Counsel [re-opened]	193473	07/21	\$100,000
	Special Finance Project	207960	10/22	\$50,000
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Olson Remcho LLP	Government Law	131968	07/14	\$400,000
	Executive Committee/Ad Hoc Committees Advice	207947	08/22	\$60,000
	Public Records Act	207950	08/22	\$54,000
	Advice/Assistance re Proposition 26/Election Issues	211922	05/23	\$100,000
Pearlman, Brown & Wax, L.L.P.	Workers' Compensation	216037	10/23	\$100,000
Procopio, Cory, Hargreaves & Savitch, LLP	CityWatch Los Angeles Public Records Act Request	216046	02/24	\$75,000
Rains Lucia Stern St. Phalle & Silver, PC	Employment Matter	211919	4/23	\$60,000
Renne Public Law Group, LLP	ACE v. MWD (PERB Case No. LA-CE-1574-M)	203466	05/22	\$100,000
	ACE v. MWD (PERB Case No. LA-CE-1611-M)	207962	10/22	\$50,000
	Employee Relations and Personnel Matters	216045	01/24	\$50,000
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000
	Oswalt v. MWD	211925	05/23	\$100,000
Seyfarth Shaw LLP	Claim (Contract #201897)	201897	11/04/21	\$350,000
	Claim (Contract #203436)	203436	11/15/21	\$350,000
	Claim (Contract #203454)	203454	01/22	\$210,000
	Reese v. MWD	207952	11/22	\$750,000
	General Labor/Employment Advice	211917	3/23	\$100,000
	Civil Rights Department Complaint	211931	07/23	\$100,000
	Crawford v. MWD	216035	09/23	\$100,000
	Tiegs v. MWD	216043	12/23	\$250,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
	Zarate v. MWD	216044	01/24	\$250,000
Sheppard Mullin Richter & Hampton	Rivers v. MWD	207946	07/22	\$250,000
	Lorentzen v. MWD	216036	09/23	\$100,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringher PC	Construction Contracts - General Conditions Update	185896	07/20	\$100,000
Thompson Coburn LLP	NERC Energy Reliability Standards	193451	08/20	\$300,000
Van Ness Feldman, LLP	General Litigation	170704	07/18	\$50,000
	Colorado River MSHCP	180191	01/19	\$50,000
	Bay-Delta and State Water Project Environmental Compliance	193457	10/15/20	\$50,000
	Colorado River Issues	211924	05/23	\$100,000

\*Expenditures paid by Bond Proceeds/Finance

\*\*Expenditures paid by another group

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**April 09, 2024**

Chair Luna called the meeting to order at 8:32 a.m.

Members present: Directors Camacho, Dick, Douglas (entered after roll call), Garza (entered after roll call), Luna, McCoy (entered after roll call), Miller, Peterson, and Seckel.

Members absent: Directors Cordero, Kurtz, and Ramos.

Other Directors present: Directors Ackerman, Bryant, Dennstedt, Erdman, Gray (teleconference posted location), Gualtieri, Lefevre (teleconference posted location), Morris, Ortega, and Smith.

Committee Staff present: Gaxiola, Hagekhalil, Mortada, and Scully.

**1. OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMITTEE ON MATTERS WITHIN THE COMMITTEE’S JURISDICTION**

None

**CONSENT CALENDAR ITEMS – ACTION**

**3. CONSENT CALENDAR OTHER ITEMS – ACTION**

- A.** Subject: Approval of the Minutes of the Legal and Claims Committee for March 12, 2024.

**4. CONSENT CALENDAR ITEMS – ACTION**

None

Director Seckel made a motion, seconded by Director Miller, to approve item 3A. Chair Ortega was present for purposes of quorum.

The vote was:

- Ayes: Directors Camacho, Dick, Luna, Miller, Ortega, Peterson, and Seckel.
- Noes: None
- Abstentions: None
- Absent: Directors Cordero, Douglas, Garza, Kurtz, McCoy, and Ramos.

The motion for Item 3A passed by a vote of 7 ayes, 0 noes, 0 abstention, and 6 absent.

## END OF CONSENT CALENDAR ITEMS

### 2. MANAGEMENT ANNOUNCEMENTS AND HIGHLIGHTS

- A. Subject: General Counsel's report of monthly activities  
General Counsel Scully had nothing to add to her written report.

### 5. OTHER BOARD ITEMS – ACTION

None

### 6. BOARD INFORMATION ITEMS

None

Director Douglas entered the meeting.

### 7. COMMITTEE ITEMS

Director Garza entered the meeting.

- a. Subject Update on pending and recently resolved employment litigation and employment legal claims.

Presented by: Henry Torres, Assistant General Counsel

The following Directors provided comments or asked questions:

1. Douglas
2. Dick
3. Peterson
4. Miller

Staff responded to the Directors' comments and questions.

Director Dick recused himself on Item 7b because he owns stock in Bayer, 3M, and Corteva companies and left the room.

Director Erdman recused himself on Item 7b because he owns stock in Raytheon and 3M companies and left the room.

Director Miller recused himself on Item 7b because he owns stock in 3M company and left the room.

Board Chair Ortega recused himself on Item 7b because Honeywell was a source of income and left the room.

Director McCoy entered the meeting.

- b.           Subject           Report on litigation in In re: Aqueous Film-Forming Foams Products Liability Litigation, Master Docket No.: 2:18-mn-2873-RMG, and settlements in: (1) City of Camden, et al. v. 3M Company, Civil Action No.: 2:23-cv-03147-RMG; and (2) City of Camden, et al. v. E.I. DuPont De Nemours and Company (n/k/a EIDP, Inc.), et al., Civil Action No.: 2:23-cv-03230-RMG [Conference with legal counsel – existing litigation; may be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)].

Presented by:     Jill Teraoka, Senior Deputy General Counsel

In closed session, the committee discussed the item. No action was taken.

## **8. FOLLOW-UP ITEMS**

None

## **9. FUTURE AGENDA ITEMS**

Chair Luna suggested that Item 7b be brought back for the committee to consider moving it over to the full board for the next meeting.

Chair Luna inquired about the meeting start time at 8:30 a.m. and stated that he would discuss with the Chair as to moving the meeting to 9:00 a.m.

Next meeting will be held on May 13, 2024.

Meeting adjourned at 9:50 a.m.

Miguel Luna  
Chair





- **Board of Directors**  
***Legal and Claims Committee***

5/14/2024 Board Meeting

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7-6

## Subject

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Authorize contracts for Bond Counsel services with Anzel Galvan LLP, Hawkins Delafield & Wood LLP, Katten Muchin Rosenman LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP; Co-Bond Counsel services with Amira Jackmon and Law Offices of Alexis S.M. Chiu; and Disclosure Counsel services with Stradling Yocca Carlson & Rauth, P.C. for the period ending June 30, 2027; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

## Executive Summary

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Metropolitan establishes a pool of Bond Counsel and Co-Bond Counsel and selects Disclosure Counsel every three years. Bond and/or Co-Bond Counsel make proposals and are selected from the pool to provide services and advice required for individual bond transactions by Metropolitan and for other tax and financial matters. Costs for Bond and Co-Bond Counsel are generally paid from bond proceeds. The last selection of counsel for the pool was approved by the Board in 2021. Inclusion in the pool is not a guarantee of work. The contracts with the firms in the current pool expire June 30, 2024. Staff is requesting authority to enter into contracts with five firms for Bond Counsel services, two firms for Co-Bond Counsel services, and a single firm for Disclosure Counsel services through June 2027.

## Proposed Action(s)/Recommendation(s) and Options

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### Staff Recommendation: Option #1

#### Option #1

- Authorize contracts for Bond Counsel services with Anzel Galvan LLP, Hawkins Delafield & Wood LLP, Katten Muchin Rosenman LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP; Co-Bond Counsel services with Amira Jackmon and Law Offices of Alexis S.M. Chiu; and Disclosure Counsel services with Stradling Yocca Carlson & Rauth, P.C. for the period ending June 30, 2027; and
- Determine that Bond Counsel, Co-Bond Counsel, and Disclosure Counsel fees may be approved by the General Counsel in amounts sufficient to procure Bond Counsel, Co-Bond Counsel, or Disclosure Counsel services for bond issues and for legal advice, as described in this board letter.

**Fiscal Impact:** Variable, depending on number and structure of bond and financial transactions.

**Business Analysis:** The municipal bond market requires the engagement of Bond Counsel and Disclosure Counsel for the issuance and offering of municipal debt. This option supports the quick and efficient hiring of Bond Counsel and Disclosure Counsel to respond to favorable market opportunities. Selection of the firms recommended for the Bond and Co-Bond Counsel pool provides options in the event any of the firms are unavailable to participate in a given financing and provides cost alternatives.

#### Option #2

Do not authorize the General Counsel to retain Bond Counsel, Co-Bond Counsel, and Disclosure Counsel as described in this board letter.

**Fiscal Impact:** Potential for higher costs with the engagement of Bond Counsel, Co-Bond Counsel, and Disclosure Counsel on a transaction by transaction basis.

**Business Analysis:** The municipal bond market requires the engagement of Bond Counsel and Disclosure Counsel for the issuance and offering of municipal debt. Not determining that the General Counsel may approve Bond Counsel, Co-Bond Counsel, and Disclosure Counsel fees as described in this board letter reduces the ability of Metropolitan to engage counsel for individual transactions quickly and may result in increased fees.

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## Alternatives Considered

Engaging Bond Counsel, Co-Bond Counsel, and Disclosure Counsel on a transaction by transaction basis. This approach, however, could lead to higher overall costs for legal services and increase the time required to engage counsel for individual transactions.

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## Applicable Policy

Metropolitan Water District Administrative Code Section 6430(d): General Counsel's employment of attorneys to render special counsel services.

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities.

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## Related Board Action(s)/Future Action(s)

The last selection of Bond Counsel, Co-Bond Counsel, and Disclosure Counsel was approved by the Board on May 11, 2021, which covered contracts for the period ending June 30, 2024.

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## Summary of Outreach Completed

Staff solicited proposals from 20 firms and received responses from 8 firms for Bond Counsel, 3 for Co-Bond Counsel, and 6 for Disclosure Counsel. Firms were reviewed for expertise, experience, and cost.

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## California Environmental Quality Act (CEQA)

### CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines Section 15378(a)).

### CEQA determination for Option #2:

None required

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## Details and Background

### Background

Metropolitan retains outside counsel to assist with the issuance and offering of its bonds, notes, and commercial paper and negotiation of related agreements, such as extension of liquidity facilities supporting variable rate bonds; to advise on interest rate swaps and other instruments connected with such indebtedness; and to provide legal and tax advice on matters affecting Metropolitan's finances.

The municipal bond market requires the engagement of Bond Counsel for the issuance of municipal debt. An opinion from nationally recognized Bond Counsel as to the validity of the bonds and the tax exemption of interest on the bonds is circulated to potential investors, delivered at closing, and attached to each bond. Co-Bond Counsel are also engaged by Metropolitan to add additional support and expertise to certain transactions. Co-Bond Counsel can provide a lower-cost support option, depending upon the transaction's scope, complexity, and timing.

Metropolitan retains a dedicated and separate Disclosure Counsel in connection with the offering and remarketing of its bonds. Some of the benefits of using a separate Disclosure Counsel include assuring consistency across disclosures, knowledge of ongoing regulatory challenges for California water agencies, and expertise in the development of disclosure policies, continuing disclosure procedures, and training for the Board and staff.

Historically, the Board has authorized, and the General Counsel has executed, three-year contracts with a pool of qualified firms for Bond Counsel and Co-Bond Counsel services. The Board has also previously authorized the execution of a three-year contract with a single firm to provide Disclosure Counsel services. Expenditures under these contracts are paid from bond proceeds or Metropolitan funds and are generally capped on a transaction by transaction basis, as deemed appropriate by the General Counsel. This practice enables Metropolitan to access the credit markets quickly and efficiently. Before work on a debt transaction begins, Legal Department staff describes the transaction to firms in the pool and solicits fee quotes. Staff assigns responsibilities to Bond and Co-Bond Counsel firms based upon each firm's expertise, experience with the particular transaction structure, fee quote for the specific transaction, and availability of attorneys. Additional services under the contracts are billed at hourly rates that would remain stable for the three-year term of the contracts.

The current contracts for Bond Counsel, Co-Bond Counsel, and Disclosure Counsel expire on June 30, 2024. On February 15, 2024, Metropolitan issued a Request for Proposals and Firm Qualifications to Serve as Bond Counsel, Co-Bond Counsel, or Disclosure Counsel to 20 firms with appropriate experience. Eleven firms submitted proposals. Legal Department staff evaluated the proposals based upon: experience involving municipal bond issues nationally, in California, and for water utilities; expertise in financial representation of government agencies; qualifications of the staff to be assigned to Metropolitan matters; location and availability of the staff; general depth of staffing; knowledge of Metropolitan; and fee structure.

Based on the review team's recommendation and concurrence by the Office of the Chief Financial Officer, the law firms of Anzel Galvan LLP, Hawkins Delafield & Wood LLP, Katten Muchin Rosenman LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP are recommended to form the Bond Counsel pool. Amira Jackmon and Law Offices of Alexis S.M. Chiu are recommended to form the Co-Bond Counsel pool. And, Stradling Yocca Carlson & Rauth, P.C. is recommended to serve as Disclosure Counsel.

The legal costs for bond issues are generally paid from bond proceeds and are contingent on the successful completion of the transaction. For the previous three-year period, for each bond issuance, the combined Bond Counsel and Co-Bond Counsel fees ranged from \$25,000 to \$75,000 and from \$40,000 to \$68,000 for Disclosure Counsel services. Costs for legal advice on existing bond transactions (for example remarketing of variable debt or replacement of liquidity facilities), tax law interpretations, and other questions related to tax and financial matters are paid from Metropolitan funds.

Staff recommends that Metropolitan enter into contracts with the referenced firms effective through June 30, 2027, to provide services on particular transactions and related legal advice in amounts as the General Counsel deems appropriate during the contract term.

  
 \_\_\_\_\_  
 Marcia Scully  
 General Counsel

5/7/2024  
 \_\_\_\_\_  
 Date

Ref# I12698334



Legal and Claims Committee

# Authorize Contracts for Bond, Co-Bond and Disclosure Counsel Services

Item 7-6

May 13, 2024

## Item # 7-6

# Establish Pool of Bond & Disclosure Counsel Firms

## Subject

Approve contracts for bond counsel services

## Purpose

Establish pool of counsels to provide services and advice required for the issuance of bonds and for other tax and financial matters

## Item # 7-6

# Establish Pool of Bond & Disclosure Counsel Firms

## Recommendation

Authorize contracts for legal services related to Metropolitan's issuance of bonds and management of debt portfolio, for the three-year period ending June 30, 2027

## Fiscal Impact

Variable, depending on number and structure of bond and financial transactions.

## Request

- Authority to enter into agreement with firms
  - 5 bond counsel
  - 2 co-bond counsel
  - 1 disclosure counsel

## Outreach & Selection

### Selection of Firms

- Overview of market
- Outreach to 20 firms
- 11 proposals received



## Outreach & Selection

### Selection Criteria

- Recent experience
- Specific qualifications
- Location and availability
- Fees

## Bond Counsel

### Recommended Firms

- Bond Counsel
  - Anzel Galvan LLP
  - Hawkins Delafield & Wood LLP
  - Katten Muchin Rosenman LLP
  - Nixon Peabody LLP
  - Norton Rose Fulbright US LLP

## Co-Bond Counsel

### Recommended Firms

- Co-Bond Counsel
  - Law Offices of Alexis Chiu
  - Amira Jackmon

## Disclosure Counsel

### Recommended Firms

- Disclosure Counsel
  - Stradling Yocca Carlson & Rauth, P.C.

## Fees

### Cost for Services

- Paid from bond proceeds
  - Bond issuances
  - Recent bond transaction fees, per transaction, have ranged from:
    - \$25,000 to \$75,000 – Bond/Co-Bond Counsel
    - \$40,000 to \$68,000 – Disclosure Counsel
- Paid from general Metropolitan funds
  - Remarketing of existing bonds
  - Tax advice

## Board Options

- Option #1
  - a. Authorize contracts for Bond Counsel services with Anzel Galvan LLP, Hawkins Delafield & Wood LLP, Katten Muchin Rosenman LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP; Co-Bond Counsel services with Amira Jackmon and Law Offices of Alexis S.M. Chiu; and Disclosure Counsel services with Stradling Yocca Carlson & Rauth, P.C. for the period ending June 30, 2027; and

## Board Options

b. Determine that Bond Counsel, Co-Bond Counsel, and Disclosure Counsel fees may be approved by the General Counsel in amounts sufficient to procure Bond Counsel, Co-Bond Counsel, or Disclosure Counsel services for bond issues and for legal advice, as described in this board letter.

- **Option #2**

Do not authorize the General Counsel to retain Bond Counsel, Co-Bond Counsel, and Disclosure Counsel as described in this board letter.

# Staff Recommendation

- Option #1



