

# 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  
A. Fellow  
C. Kurtz  
T. McCoy  
C. Miller  
M. Ramos  
K. Seckel

## **Legal and Claims Committee**

Meeting with Board of Directors \*

**January 14, 2025**

**8:30 a.m.**

**Tuesday, January 14, 2025  
Meeting Schedule**

**08:30 a.m. LEGAL  
11:30 a.m. Break  
12:00 p.m. BOD  
01:15 p.m. LEG**

**Agendas, live streaming, meeting schedules, and other board materials are available here:**

**<https://mwdh2o.legistar.com/Calendar.aspx>. Written public comments received by 5:00 p.m. the business days before the meeting is scheduled will be posted under the Submitted Items and Responses tab available here:**

**<https://mwdh2o.legistar.com/Legislation.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: 891 1613 4145.**

**Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 815 2066 4276 or to join by computer [click here](#).**

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**There will be No In-Person Participation Permitted. Participation is by teleconference only. See the teleconference information below.**

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\* 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**

Zoom Online

- A. General Counsel's report of monthly activities [21-4101](#)

**Attachments:** [01142025 LC 2A Report](#)

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

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

- A. Approval of the Minutes of the Legal and Claims Committee for December 9, 2024 (Copies have been submitted to each Director, any additions, corrections, or omissions) [21-4102](#)

**Attachments:** [01142025 LC 3A \(12092024\) Minutes](#)

**4. CONSENT CALENDAR ITEMS - ACTION**

- 7-5 Report on Nevada Environmental Response Trust Site (former Tronox Site) in Henderson, Nevada and authorize an increase of \$150,000 to an amount not to exceed \$450,000 for an existing contract with GeoPentech, Inc. for consulting services; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-4143](#)

**Attachments:** [01142025 LC 7-5 B-L](#)  
[01142025 LC 7-5 Presentation](#)

- 7-6 Report on litigation in Darren A. Reese v. Metropolitan Water District of Southern California, Riverside County Superior Court Case No. CVPS2204312, and authorize increase in the maximum amount payable under a contract for legal services with Seyfarth Shaw LLP in the amount of \$150,000 for a total amount not to exceed \$900,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-4166](#)

**Attachments:** [01142025 LC 7-6 B-L](#)  
[01142025 LC 7-6 Presentation](#)

- 7-7 Authorize increase of \$200,000, to a maximum amount payable of \$600,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA [21-4167](#)

**Attachments:** [01142025 LC 7-7 B-L](#)  
[01142025 LC 7-7 Presentation](#)

**\*\* END OF CONSENT CALENDAR ITEMS \*\*****5. OTHER BOARD ITEMS - ACTION**

- 8-2** Report on litigation in Maria Carmen Zarate v. Metropolitan Water District of Southern California, Los Angeles County Superior Court Case No. 23STCV15786; and authorize an increase in the maximum amount payable under contract for legal services with Seyfarth Shaw LLP, in the amount of \$250,000 for a total amount not to exceed \$500,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] [21-4155](#)
- 8-3** Report on litigation in Encarnacion Gutierrez v. Metropolitan Water District of Southern California, Los Angeles County Superior Court Case No. 23STCV11052; and authorize an increase in the maximum amount payable under contract for legal services with BDG Law Group, APLC, in the amount of \$250,000 for a total amount not to exceed \$500,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] [21-4156](#)
- 8-4** Conference with legal counsel regarding anticipated litigation based on existing facts and circumstances, including receipt of a government claim threatening litigation, there is significant exposure to litigation against Metropolitan: one potential case; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(2); the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [+621-4168](#)

**Attachments:** [01142025 LC 8-4 Claim](#)

**8-5** Report on litigation in 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; and provide direction to staff on potential settlement of the 2014, 2016, and 2018 actions, including the cross-complaints and appeals, San Francisco County Superior Court Case Nos.CPF-14-514004, CPF-16-515282, and CPF-18-516389 and Court of Appeal for the First Appellate District Case No. A170156; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] [21-4144](#)

**6. BOARD INFORMATION ITEMS**

NONE

**7. COMMITTEE ITEMS**

NONE

**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

### ***Daffney Iverson v. Metropolitan*** **(Los Angeles County Superior Court)**

On November 14, 2024, former employee Daffney Iverson filed an employment lawsuit against Metropolitan in Los Angeles County Superior Court. Plaintiff served the lawsuit on Metropolitan on December 20, 2024. The complaint alleges causes of action for discrimination, hostile work environment, retaliation, failure to accommodate, failure to engage in the interactive process, failure to prevent discrimination, negligent hiring, whistleblower retaliation, and intentional infliction of emotional distress. The Legal Department has retained Sheppard, Mullin, Richter & Hampton, LLP, to defend the lawsuit.

### ***Luz Villavicencio v. Metropolitan*** **(Los Angeles County Superior Court)**

On August 30, 2024, employee Luz Villavicencio filed an employment lawsuit against Metropolitan in

Los Angeles County Superior Court. Plaintiff served the lawsuit on Metropolitan on October 3, 2024. The complaint alleges causes of action for Equal Pay Act violations, retaliation under the Equal Pay Act, whistleblower retaliation, failure to provide wage statements and unfair business competition. The Legal Department has retained Hausman & Sosa, LLP, to defend the lawsuit.

### ***Ryan Tiegs v. Metropolitan*** **(Riverside County Superior Court)**

On December 11, 2024, the parties participated in a mediation, which did not resolve the case. On December 19, 2024, Metropolitan filed a motion for summary judgment or, in the alternative, summary adjudication. The hearing on the motion is set for March 4, 2025. As previously reported, trial is set for April 4, 2025.

## Other Matters

### **Miscellaneous**

Legal Department staff worked with Finance staff to prepare and post Metropolitan’s annual financial information filings for fiscal year ended June 30, 2024, pursuant to continuing disclosure requirements for all of Metropolitan’s outstanding

revenue and general obligation bonds. The annual filings include certain financial and operational disclosures and the Annual Comprehensive Financial Report for Fiscal Years Ended June 30, 2024 and 2023. The annual filings are available at <http://emma.msrb.org> (the Electronic Municipal Market Access system) maintained by the Municipal Securities Rulemaking Board.

## Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>
Action in which MWD is a party	1	Complaint for Damages for: (1) Discrimination in Violation of FEHA; (2) Hostile Work Environment, Harassment in Violation of FEHA; (3) Retaliation in Violation of FEHA; (4) Failure to Provide Reasonable Accommodation in Violation of FEHA; (5) Failure to Engage in the Interactive Process in Violation of FEHA; (6) Failure to Prevent Discrimination, Harassment, or Retaliation in Violation of FEHA; (7) Negligent Hiring, Supervision, and Retention; (8) Whistleblower, filed in Los Angeles County Superior Court, in the case <i>Daffney Iverson v. MWD</i> , Case No. 24STCV29984



Government Code Claims	2	Claims relating to: (1) debris from work being performed adjacent to the roadway cracked the windshield of Claimant’s vehicle; and (2) an accident involving an MWD vehicle	
Requests Pursuant to the Public Records Act	14	<u>Requestor</u>	<u>Documents Requested</u>
		Buena Park Public Works Department	As-builts for any MWD facilities near project on Orangethorpe Avenue in Buena Park
		Center for Contract Compliance (2 requests)	Name of contractor, list of subcontractors, original bid advertisement, and DIR Project ID for: (1) San Diego Canal Rehabilitation - State 3 Rebid; and (2) Lake Skinner Facility Modernization
		D R Consultants & Designers	List of subconsultants used by MWD prime consultants for design services
		Delta Conveyance Design & Construction Authority	Intent to Award Letter and Contract for Charter Bus Services
		Los Angeles County Sanitation Districts	Method-Of-Service Study Agreement and Study Confidentiality Agreement between MWD and Southern California Edison Company for the Pure Water Southern California Project
		Los Angeles Times	Letter sent in November 2024 from the Chief of Staff Mohsen Mortada to the MWD Board
		MAPA/AFSCME Local 1001	Correspondence regarding the hiring of Chief of Staff Mohsen Mortada and justification for the exemption to the recruitment policy for this hiring
		Means Consulting	Historical data for salinity in State Project water and Colorado River water
		Orange County Water District	General Mineral and Physical Analysis of Metropolitan’s Water Supplies for the period July 2023 through June 2024
		PMCS Group	Proposals and evaluation sheets for Requests for Proposals for: (1) Western Region Projects Construction Management and Inspection Services; and (2) Pre-Stressed Concrete Cylinder Pipe Program and Pipeline Rehabilitation Projects Construction Management



<u>Requestor</u>	<u>Documents Requested</u>
RiverH2O (2 requests)	(1) Amount of water delivered through the Colorado River Aqueduct to Lake Mathews during each of the past seven years; and (2) amount of water at Gene and Hinds Pumping Plants, source of non-CRA water and amount of that water delivered to Lake Mathews
Rothner, Segall & Greenstone	Records dated between December 16, 2022, and December 16, 2024, regarding release time requests and the approval/denial of those requests



**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><u><a href="#">Tulare Lake Basin Water Storage District v. California Department of Water Resources (case name for the consolidated cases)</a></u></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><del><u><a href="#">Tulare Lake Basin Water Storage District v. California Department of Water Resources</a></u></del></p> <p><i>Sacramento County Superior Ct. (Judge Acquisto)</i></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>• Deadline for DWR to prepare the administrative record extended to <u><a href="#">Jan. 31, 2025</a></u><del><u><a href="#">Nov 29, 2024</a></u></del></li> <li>• June 20, 2024 trial court issued a preliminary injunction halting pre-construction geotechnical soil testing until DWR certifies that the DCP is consistent with the Delta Plan</li> <li>• Aug. 19, 2024 DWR appealed the injunction</li> <li>• Aug. 23, 2024 trial court denied DWR's motion to modify or stay the preliminary injunction</li> <li>• Aug. 29, 2024 DWR filed a petition in the court of appeal seeking to stay the preliminary injunction pending a ruling on the merits of its appeal</li> <li>• Oct. 18, 2024 stay petition denied.</li> <li>• Oct. 24, 2024 cases ordered consolidated for all purposes under <i>Tulare Lake Basin Water Storage District v. California Department of Water Resources</i></li> <li>• April 4, 2025 next case management conference</li> <li>• <u><a href="#">Jan. 21, 2025 DWR's opening brief due</a></u><del><u><a href="#">Briefing deadlines on the appeals will begin once the clerk's transcript of trial court proceedings is filed with the court of appeal</a></u></del></li> </ul>



Subject	Status
<p><b>Delta Conveyance Project Water Right Permit Litigation</b></p> <p><i>Central Delta Water Agency et al. v. State Water Resources Control Board</i></p> <p>Fresno County Superior Court (Judge Hamilton)</p>	<ul style="list-style-type: none"> <li>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</li> <li>Sept. 19 hearing date for State Water Resources Control Board demurrer (motion to dismiss) and motion to strike and DWR’s demurrer (motion to dismiss) taken off calendar by court-entered stipulation of the parties after DWR withdrew the 2009 petition to extend its SWP water rights</li> <li><del>Jan 14, 2025</del><del>Dec. 17, 2024</del> Case Status Conference</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> <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><b>Validation Action</b></li> <li>Final Judgment and Final Statement of Decision issued January 16, 2024 ruling the bonds are not valid</li> <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>April 16, 2024 DWR moved to dismiss the cross appeals as untimely</li> <li>October 4, 2024 DWR’s and Supporting SWP Contractors’ Joint Opening Brief and Appellants’ Appendix filed</li> <li>October 15, 2024 DWR’s and Supporting SWP Contractors’ joint motion for calendar preference was granted; the appeal will be accorded priority pursuant to statutory provisions, which should accelerate oral argument and the court’s decision once briefing is completed in about March 2025</li> <li>Respondents’ and Cross-Appellants’ briefs due <del>Jan 2, 2025</del><del>December 3, 2024</del></li> <li><del>Nov. 26, 2024 Respondents/Cross-Appellants moved for a 30-day extension of time</del></li> <li><del>Nov. 27, 2024 DWR, Metropolitan and Coachella Valley Water District filed an opposition to the time extension motion</del></li> </ul>



Subject	Status
<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>2020 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><del><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></del></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><del><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></del></p> <p><del><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</i></del></p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA)</i></p>	<ul style="list-style-type: none"> <li>• Administrative records certified in October 2023</li> <li>• Order entered to delay setting a merits briefing schedule by 90 days and extending the time to bring the action to trial by six months</li> <li>• <u>Deadline to bring all the coordinated cases to trial is now December 5, 2025</u></li> <li>• <u>December 2024 three petitioner groups filed requests for dismissal without prejudice</u></li> <li>• <u>January 2025 remaining petitioner groups will meet and confer in light of the new, 2024 CESA Incidental Take Permit</u></li> </ul>





Subject	Status
<p><b>2024 CESA Incidental Take Permit Cases</b></p> <p><i>San Francisco Baykeeper, et al. v. California Department of Water Resources</i> (CEQA, Delta Reform Act, Public Trust Doctrine)</p> <p>Sacramento County Superior Ct. Case No. <a href="#">24WM000185</a> <del>TBD</del> (Judge <a href="#">Arguelles</a><del>TBD</del>)</p> <p><i>California Sportfishing Protection Alliance, et al. v. California Department of Water Resources, et al.</i> (CEQA, CESA, Delta Reform Act, Public Trust Doctrine)</p> <p>Sacramento County Superior Ct. Case No. 24WM000181 (Judge Arguelles)</p> <p><i>Tehama-Colusa Canal Authority, et al. v. California Department Of Water Resources, et al.</i> (CEQA)</p> <p>Sacramento County Superior Ct. Case No. 24WM000183 (Judge Rockwell)</p> <p><b><u><a href="#">Central Delta Water Agency and South Delta Water Agency v. California Department of Water Resources</a></u></b> (CEQA, Delta Reform Act, Watershed Protection Acts, Public Trust Doctrine)</p> <p><b><u><a href="#">Sacramento County Superior Ct. Case No. 24WM000186</a></u></b> (Judge Acquisto)</p>	<ul style="list-style-type: none"> <li>Cases challenge DWR’s Final EIR and the California Department of Fish and Wildlife’s California Endangered Species Act Incidental Take Permit for the updated Long Term Operations plan for the State Water Project</li> </ul>
<p><b>CDWR Environmental Impact Cases</b> <b>Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C100302 (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>Six notices of appeal filed</li> <li>Appellants’ opening briefs and appendices filed Oct. 29 and Oct. 31</li> <li>Jan. 31, 2025 deadline for DWR’s opposition brief</li> </ul>



Subject	Status
<p><del>COA Addendum/            No Harm Agreement</del></p> <p><del>North Coast Rivers Alliance v. DWR            Sacramento County Superior Ct.            (Judge Rockwell)</del></p>	<ul style="list-style-type: none"> <li><del>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</del></li> <li><del>• Westlands Water District and North Delta Water Agency granted leave to intervene</del></li> <li><del>• Metropolitan &amp; SWC monitoring</del></li> <li>• <del>Deadline to prepare administrative record last extended to Nov. 18, 2022</del> <u>Case dismissed Dec. 12, 2024</u></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 Acquisto)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i>            Sacramento County Super. Ct.            (Judge Acquisto)</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>



***San Diego County Water Authority v. Metropolitan, et al.***

Cases	Date	Status
<b>2014, 2016</b>	Sept. 30	Based on the Court of Appeal's Sept. 21 opinion in the parties' earlier 2010/2012 cases, 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 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.
	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



Cases	Date	Status
<b>2014, 2016, 2018 (cont.)</b>		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 16-27	Trial occurred but did not conclude.
	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).
	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)



Cases	Date	Status
<b>2014, 2016, 2018 (cont.)</b>	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
	April 17	Metropolitan filed notice of cross-appeal
	May 3	Participating member agencies filed notice of appeal
	May 31	Parties filed opening briefs on prevailing party
	June 28	Parties filed response briefs on prevailing party
	July 17	Court issued tentative ruling that there is no prevailing party due to mixed results
	July 18	Hearing on prevailing party; court took matter under submission, stating it expects to rule in mid-Aug.
	Aug. 15	Court issued ruling that Metropolitan is the prevailing party and is entitled to SDCWA's payment of its litigation costs and fees under the Exchange Agreement
	Sept. 25	Court issued order extending time for Metropolitan to file its memorandum of costs and motion for attorneys' fees
	Sept. 27	Metropolitan filed its memorandum of costs in the amount of \$372,788.64



Cases	Date	Status
<b>2014, 2016, 2018 (cont.)</b>	Oct. 18	Parties filed a joint application to extend the briefing schedule in the Court of Appeal
	Oct. 21	Court of Appeal granted parties' joint briefing schedule; briefing begins April 11, 2025 and ends October 10, 2025
	Oct. 29	SDCWA filed its motion to tax (reduce) Metropolitan's costs
	Nov. 26	SDCWA withdrew its motion to tax (reduce) Metropolitan's costs and requested that the court cancel the Dec. 11 motion hearing
	<u>Dec. 17</u>	<u>The court entered the parties' stipulated order that Metropolitan's recoverable attorneys' fees are \$3,402,408.71 and its recoverable costs are \$372,788.64; unless the Court of Appeal reverses the order that Metropolitan is the prevailing party, SDCWA is to pay Metropolitan these amounts, plus interest; and briefing on Metropolitan's motion for attorneys' fees is vacated.</u>
	<u>Dec. 17</u>	<u>The court issued an order reassigning the cases from the Honorable Anne-Christine Massullo to the Honorable Ethan P. Schulman.</u>
<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	<b>Employment Matter</b>	<b>220423</b>	<b>10/24</b>	<b>\$100,000</b>
	Employment Matter	222524	11/24	\$50,000
	<u>Employment Matter</u>	<u>222429</u>	<u>12/24</u>	<u>\$50,000</u>
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
Anzel Galvan LLP	Bond Issues	220411	07/24	N/A
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	\$1,316,937
	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
BDG Law Group, APLC	Gutierrez v. MWD	216054	03/24	\$250,000
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	\$150,000
	Pure Water Southern California	207966	11/22	<del>\$250,000</del> <del>\$100,000</del>
	Progressive Design Build	216053	04/24	\$250,000





Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
Brown White & Osborn LLP	Employment Matter	222523	10/24	\$50,000
	Employment Matter	222525	11/24	\$50,000
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	\$50,000
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
	Bond Counsel	220409	07/24	N/A
Castañeda + Heidelman LLP	Employment Matter	216055	04/24	\$100,000
	<u>Employment Matter</u>	<u>222530</u>	<u>11/24</u>	<u>\$100,000</u>
Cislo & Thomas LLP	Intellectual Property	170703	08/17	\$100,000
Curls Bartling P.C.*	Bond Counsel	200470	07/21	N/A
Davis Wright Tremaine, LLP	Advice and Representation re Potential Litigation	220424	10/24	\$250,000
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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Erin Joyce Law, PC	Employment Matter	216039	11/23	\$100,000
	Ethics Advice	216058	05/24	\$100,000
Glaser Weil Fink Howard Jordan & Shapiro	Employment Matter	220395	7/24	\$150,000
Greines, Martin, Stein & Richland LLP	SDCWA v. MWD	207958	10/22	\$100,000
	Colorado River Matters	207965	11/22	\$100,000
Hackler Flynn & Associates	Government Code Claim Advice	216059	5/24	\$150,000
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	\$250,000
Hanson Bridgett LLP	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
Harris & Associates	Employment Matter	220397	7/24	\$100,000
Hausman & Sosa, LLP	Jones v. MWD	216056	05/24	\$100,000
	Villavicencio v. MWD	220426	10/24	\$100,000
	Jensen Operator Standby Removal	222522	10/24	\$100,000
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
	Bond Counsel	220405	07/24	N/A
Hemming Morse, LLP	Baker Electric v. MWD	211933	08/23	\$175,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$200,000
Innovative Legal Services, P.C.	Employment Matter	211915	01/19/23	\$175,000
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
<u>Katten Muchin Rosenman LLP</u>	<u>Bond Counsel</u>	<u>220412</u>	<u>07/24</u>	<u>N/A</u>
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$250,000
Kutak Rock LLP	Delta Islands Land Management	207959	10/22	\$60,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$240,821
	FLSA Audit	180199	02/19	\$50,000
	EEO Advice	216041	12/23	\$200,000
Lieff Cabraser Heimann & Bernstein, LLP	PFAS Multi-District Litigation	216048	03/24	\$200,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$550,000
	PFAS-Related Issues (PWSC)	220414	08/24	\$100,000
	Perris Valley Pipeline Project	220415	07/24	\$100,000
	PFAS-Related Issues (General)	220413	10/24	\$50,000
Meyers Nave Riback Silver & Wilson	Pure Water Southern California	207967	11/22	\$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	\$3,250,000
	Arvin-Edison v. Dow Chemical	203452	01/22	\$150,000
	Semitropic TCP Litigation	207954	09/22	\$75,000
	Employment Matter	216063	06/24	\$100,000
	Employment Matter	220417	08/24	\$100,000
Nixon Peabody LLP*	Bond Counsel [re-opened]	193473	07/21	N/A
	Special Finance Project	207960	10/22	\$50,000
	Bond Counsel	220404	07/24	N/A
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A
	Bond Counsel	220407	7/24	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
	Advice/Assistance re Proposition 26/Election Issues	211922	05/23	\$100,000
Robert P. Otilie	Employment Matter	220403	09/24	\$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
	Public Records Act Requests	220399	7/24	\$75,000
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
	ACE v. MWD (PERB Case No. LA-CE-1729-M)	220421	09/24	\$35,000
	AFSCME v. MWD (PERB Case No. LA-CE-1733-M)	220422	09/24	\$35,000
	AFSCME v. MWD (PERB Case No. LA-CE-1738-M)	220425	10/24	\$35,000
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000
	Oswalt v. MWD	211925	05/23	\$100,000
	Unlawful Encroachment on Metropolitan Rights-of-Way	216065	06/24	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	<del>\$250,000</del> <del>\$100,000</del>
	Civil Rights Department Complaint	211931	07/23	\$100,000
	Crawford v. MWD	216035	09/23	<del>\$250,000</del> <del>\$100,000</del>
	Tiegs v. MWD	216043	12/23	\$250,000
	Zarate v. MWD	216044	01/24	\$250,000
Sheppard Mullin Richter & Hampton LLP	Lorentzen v. MWD	216036	09/23	<del>\$250,000</del> <del>\$200,000</del>
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
	Bond Counsel	220408	7/24	N/A
The Myers Law Group, APC	Employment Matter	220420	11/24	\$100,000
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	\$250,000

\*Expenditures paid by Bond Proceeds/Finance

\*\*Expenditures paid by another group

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**December 9, 2024**

Chair Luna called the meeting to order at 11:01 a.m.

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

Members absent: Director Cordero

Other Directors present: Directors Ackerman, Alvarez, Armstrong, Bryant, Dennstedt, Erdman, Fong-Sakai, Goldberg, Gray (teleconference posted location), Lefevre (teleconference posted location), Lewitt, McMillan, Morris, Ortega, Pressman (teleconference posted location), and Smith (teleconference posted location).

Committee Staff present: Beatty, Gaxiola, Scully, Upadhyay, and Wheeler.

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

None

**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.

Director Ramos entered the meeting.



**CONSENT CALENDAR ITEMS – ACTION**

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

- A. Subject: Approval of the Minutes of the Special Legal and Claims Committee for November 18, 2024.

No comments were made.

Director Garza entered the meeting.

**4. CONSENT CALENDAR ITEMS – ACTION**

- 7-3** Subject Authorize an increase of \$250,000, to a maximum amount not to exceed \$500,000, for workers' compensation legal services contract with the law firm Hanna, Brophy, MacLean, McAleer & Jensen, LLP; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Presented by: Tony Zepeda, Senior Deputy General Counsel

The following Directors provided comments or asked questions:

1. Miller
2. Douglas
3. Fong-Sakai

Staff responded to the Directors' comments and questions.

Director Fellow made a motion, seconded by Director Miller, to approve items 3A and 7-3.

The vote was:

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

The motion for Items 3A and 7-3 passed by a vote of 11 ayes, 0 noes, 0 abstentions, and 1 absent.

**END OF CONSENT CALENDAR ITEMS**

## 5. OTHER BOARD ITEMS – ACTION

None

## 6. BOARD INFORMATION ITEMS

None

## 7. COMMITTEE ITEMS

- a. Subject: Report on litigation in 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; including report on discussions regarding potential settlement of the 2014, 2016, and 2018 actions, including the cross-complaints and appeals, San Francisco County Superior Court Case Nos. CPF-14-514004, CPF-16-515282, and CPF-18-516389 and Court of Appeal for the First Appellate District Case No. A170156 [Conference with legal counsel – existing litigation; may be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)]

Presented by: Marcia Scully, General Counsel

Directors Goldberg, Fong-Sakai, Smith, and Miller, representing the San Diego County Water Authority, withdrew from the meeting for the report on item 7a.

Chair Luna reported that the committee discussed and conferred with legal counsel regarding Item 7a. No action was taken in closed session.

**8. FOLLOW-UP ITEMS**

None

**9. FUTURE AGENDA ITEMS**

None

Next meeting will be held on January 14, 2025.

Meeting adjourned at 12:52 pm

Miguel Luna  
Chair



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

1/14/2025 Board Meeting

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7-5

## Subject

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Report on Nevada Environmental Response Trust Site (former Tronox Site) in Henderson, Nevada and authorize an increase of \$150,000 to an amount not to exceed \$450,000 for an existing contract with GeoPentech Inc. for consulting services; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

## Executive Summary

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With GeoPentech Inc.'s (GeoPentech) assistance over the past 20 years, Metropolitan has been monitoring and providing input on the investigation and remediation of the Nevada Environmental Response Trust (NERT or the Trust) Site, the nearby Endeavour Site, and the associated perchlorate groundwater plumes in Henderson, Nevada. The NERT Site (formerly owned by Tronox Inc.) and the Endeavour Site (formerly owned by American Pacific Corporation (AMPAC)) are two major sources of perchlorate in the Colorado River. This letter requests an increase in the maximum amount payable under contract with GeoPentech for consulting services by \$150,000 to a maximum amount of \$450,000. Since October 2009, Metropolitan has paid GeoPentech approximately \$267,008 for its consulting services. Staff is requesting an additional \$150,000 to continue this ongoing work.

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

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### Staff Recommendation: Option #1

#### Option #1

Authorize an increase of \$150,000 to an amount not to exceed \$450,000 for an existing contract with GeoPentech Inc. for consulting services.

**Fiscal Impact:** \$150,000 for the authorized consulting services funded within the FY 2024/2025 budget.

**Business Analysis:** Approval will provide Metropolitan with specialized consulting services to work with the Trust, the Nevada Division of Environmental Protection (NDEP), and the U.S. Environmental Protection Agency (EPA) to protect the Colorado River from perchlorate contamination from the NERT Site (former Tronox Site) and the Endeavour Site (former AMPAC/PEPCON Site) in Henderson, Nevada.

#### Option #2

Do not amend the contract for consulting services with GeoPentech Inc.

**Fiscal Impact:** Unknown.

**Business Analysis:** Metropolitan would not have access to specialized expertise on key hydrogeologic issues while working with the Trust, NDEP, and EPA to protect the Colorado River from perchlorate contamination originating in Henderson, Nevada.

## Applicable Policy

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Metropolitan Water District Administrative Code Section 6431: Authority to Obtain Expert Assistance

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

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The last increase in the maximum amount payable in the contract for consulting services with GeoPentech for the *In Re Tronox Incorporated, et al.* matter was approved by the Board more than 7 years ago in August 2017. The maximum amount payable was increased by \$100,000 to \$300,000 on August 15, 2017.

## **Summary of Outreach Completed**

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At the time of Tronox's bankruptcy, due to concern that there would be inadequate funding to clean up the NERT Site after the bankruptcy, Metropolitan contacted the Southern Nevada Water Authority (SNWA) and the Central Arizona Water Conservation District (CAWCD) and formed the "Colorado River Authorities." This enabled the three agencies to participate in the bankruptcy action and help ensure the bankruptcy settlement provided sufficient funds to fully remediate the NERT Site, as well as resulted in their designation as stakeholders in the cleanup of the NERT Site. Also, the CAWCD supports Metropolitan's effort to include California maximum contaminant levels (MCLs) for perchlorate and hexavalent chromium as cleanup requirements at the NERT Site and agrees the MCLs of downstream states should be protected as part of the site cleanup. In addition, Metropolitan staff recently discussed the NERT Site with the Colorado River Board of California, which is interested in getting more involved with monitoring the cleanup of the NERT Site and its potential impact on Colorado River water quality.

## **California Environmental Quality Act (CEQA)**

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### **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

## **Details and Background**

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### **Background**

Since 2004, GeoPentech has provided Metropolitan with specialized geologic and hydrogeologic expertise regarding perchlorate issues affecting the Colorado River. Perchlorate was first discovered in the Colorado River in 1997 at Metropolitan's Colorado River Aqueduct (CRA) intake at Lake Havasu and traced back to the Las Vegas Wash and the NERT and Endeavour Sites in Henderson, Nevada. The NERT Site was constructed by the U.S. Department of Defense during World War II and used for the production of military supplies and various other products over many years, resulting in significant contamination of the site and the underlying groundwater with perchlorate and hexavalent chromium, among other contaminants. Kerr-McGee Chemical Company (Kerr-McGee) owned and operated the NERT Site for several years. From 2000 through March 2006, Kerr-McGee engaged in a process of corporate reorganization that resulted in the creation of Tronox as a spin-off successor corporate entity.

In January 2009, Tronox filed for bankruptcy in the Southern District of New York. As part of the bankruptcy proceedings, there was litigation between Kerr-McGee and Tronox (the Adversary Action). In 2014, the Adversary Action settled. As part of the settlement, the Trust received \$1.1 billion to clean up the NERT Site and the contamination emanating from the site. Metropolitan (with the assistance of GeoPentech) and the other Colorado River stakeholders (CAWCD and SNWA) continue to monitor: (1) the Trust's use of the settlement money, and (2) the investigation and remediation of the perchlorate contamination originating at the NERT Site and at the nearby Endeavour Site.

The Endeavour Site (formerly the AMPAC site) was built in 1958 and specialized in the production of ammonium perchlorate, a chemical primarily used for rockets and missiles. Perchlorate and other contaminants are in the groundwater under the Endeavour Site and are migrating towards the Las Vegas Wash. Endeavour, LLC (Endeavour) was formed in 2015 and took over from AMPAC the ongoing remediation of the groundwater.

Perchlorate concentrations in the Las Vegas Wash have decreased by more than 90 percent since remediation activities began at the NERT and Endeavour Sites. Also, perchlorate levels at the CRA intake at Lake Havasu have similarly declined from 9 micrograms per liter ( $\mu\text{g/L}$ ) in 1998 to typically less than 2  $\mu\text{g/L}$  since 2006. This is below California's current MCL for perchlorate of 6  $\mu\text{g/L}$ , which was established in October 2007. In February 2015, California lowered the public health goal (PHG) for perchlorate from 6  $\mu\text{g/L}$  to 1  $\mu\text{g/L}$ . California's detection limit for purposes of reporting (DLR) for perchlorate was lowered from 4  $\mu\text{g/L}$  to 2  $\mu\text{g/L}$  on July 1, 2021, and to 1  $\mu\text{g/L}$  on January 1, 2024. This could possibly result in California's MCL for perchlorate being set at a lower number in the near future since the MCL must be set as close to the PHG as is technologically and economically feasible. In addition, EPA must propose an MCL for perchlorate by November 2025 and finalize the MCL by May 2027. Metropolitan is closely monitoring these federal and California regulatory developments for perchlorate, and GeoPentech is assisting by evaluating the feasibility of the Trust's ongoing and planned remedial activities to achieve California's existing and potential future regulatory levels for perchlorate.

### **GeoPentech's Technical Expertise**

GeoPentech is helping Metropolitan by analyzing various significant technical issues to determine the most efficient and cost-effective methods to investigate and remediate the NERT Site, as well as assessing the possible commingling of the perchlorate plumes from the NERT and Endeavour Sites. Metropolitan requires the professional services of GeoPentech to provide geologic and hydrogeologic technical services, including their knowledge base of the site conditions developed over the past 20 years, to evaluate the investigation process and remedial options for both the NERT Site and the Endeavour Site because Metropolitan does not have this level of specialized in-house expertise.

### ***Remediation of the NERT Site***

After perchlorate in the Colorado River was traced to the NERT Site, Kerr-McGee began operating a temporary treatment system to clean up the perchlorate-impacted groundwater. In 2002, the treatment system was replaced with a groundwater extraction and treatment system that still operates at the site. In compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (also commonly known as CERCLA or Superfund), the Trust started a remedial investigation at the NERT Site in 2014. The objectives of the remedial investigation are to characterize the conditions of the site, including the nature and extent of contamination. The NERT remedial investigation study area extends north from the NERT Site towards the Las Vegas Wash and has been divided into three Operable Units (OUs). (See **Attachment 1**.) NERT will use the information from the remedial investigations, the risk assessments, the groundwater flow and transport model, and the pilot and treatability studies to conduct the feasibility studies for all three OUs, which will provide the basis for selecting the final remedy for the entire NERT remedial investigation study area. The final remedy is subject to review and approval by NDEP, which is the lead agency for the NERT Site, with input from both EPA, the support agency for the NERT Site, and project stakeholders, including Metropolitan.

### ***Use of California's MCLs as Cleanup Standards***

NERT submitted its initial Remedial Investigation Report for OU-1 and OU-2 to NDEP and EPA in July 2021. GeoPentech helped Metropolitan to review and prepare comments on NERT's report. NDEP agreed with several of Metropolitan's comments, including that NERT should use California's PHG of 1  $\mu\text{g/L}$  for perchlorate and MCL for total chromium of 50  $\mu\text{g/L}$  in drinking water as to-be-considered (TBC)<sup>1</sup> criteria for remedial action objectives (RAOs) given that those objectives "focus on achieving the Trust's overarching objective of protecting

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<sup>1</sup> "The 'to be considered' (TBC) category consists of advisories, criteria, or guidance that were developed by EPA, other federal agencies, or states that may be useful in developing CERCLA remedies." 40 C.F.R. § 300.400(g)(3).

the Las Vegas Wash and downstream interests over a long-time frame (i.e., greater than five years)” and “help achieve out-of-state MCLs at downstream state boundaries.” (See **Attachment 2.**) However, NERT refused to use these California standards in connection with its cleanup objectives.

With GeoPentech’s assistance, Metropolitan then explained to NDEP and EPA that California’s PHG of 1 µg/L for perchlorate and proposed MCL of 10 µg/L for hexavalent chromium should be used as TBC criteria in order to protect human health and the environment downstream in California. In addition, Metropolitan could face significant potential liability as a result of the perchlorate from the NERT Site getting into Metropolitan’s water supply. For example, in 2008, defendants in the Orange County Water District’s (OCWD’s) groundwater contamination lawsuit filed cross-claims against Metropolitan based on Metropolitan’s sale of water containing perchlorate to OCWD for replenishment purposes. As explained above, the source of the perchlorate in Metropolitan’s Colorado River water was the NERT and Endeavour Sites.

Consequently, NDEP and EPA directed NERT to use California’s MCLs of 6 µg/L for perchlorate and 50 µg/L for total chromium as environmental standards that NERT’s cleanup actions must achieve (also called Applicable or Relevant and Appropriate Requirements or ARARs) and California’s PHG for perchlorate of 1 µg/L and California’s proposed MCL of 10 µg/L for hexavalent chromium as TBCs for cleanup objectives at the California state line. Despite this clear direction, NERT did not include any reference to out-of-state MCLs in its August 15, 2023, revised Remedial Investigation Report for OU-1 and OU-2. In response, on November 16, 2023, Metropolitan submitted comments (which CAWCD joined) on NERT’s revised Remedial Investigation Report for OU-1 and OU-2 expressing Metropolitan’s significant concern that NERT had improperly removed from the revised report all references to achieving out-of-state MCLs at downstream state boundaries, including compliance with California’s MCLs for perchlorate and total chromium.

NDEP agreed with Metropolitan that NERT’s August 15, 2023, revised Remedial Investigation Report for OU-1 and OU-2 did not acceptably address the agencies’ comments. However, NDEP directed NERT to use California’s MCL of 6 µg/L for perchlorate and California’s MCL of 50 µg/L for total chromium as TBCs (not as ARARs, which are more stringent cleanup standards), with NDEP acknowledging that this “is a modification from the previous directive.” Nevertheless, Metropolitan’s position remains that it is extremely important that NDEP and EPA require NERT to clean up the NERT Site so that California’s MCLs of 6 µg/L for perchlorate and 10 µg/L for hexavalent chromium be met at California’s state line, and perchlorate and hexavalent chromium do not continue to migrate into California.

### ***Upcoming Tasks***

NERT is currently developing the feasibility study for OU-1 and OU-2. The feasibility study evaluates whether various potential remediation methods can achieve the RAOs, comply with ARARs, and consider TBC criteria. Thus, GeoPentech’s expertise and tenure supporting Metropolitan with the NERT Site will be essential in helping Metropolitan to review and provide input on the feasibility study. The major tasks for which GeoPentech is providing important, specialized geologic and hydrogeologic expertise for at least the next couple of years and the estimated time that GeoPentech will spend on each task are set forth in the table below.

<b>TASK</b>	<b>PURPOSE</b>	<b>GEOPEENTECH’S ESTIMATED TIME</b>
Feasibility Study Report for OU-1 and OU-2	Evaluates whether various potential remediation methods can achieve the remedial action objectives, comply with ARARs, and consider TBC criteria.	40-60 hours
Remedial Investigation Report for OU-3	Defines the nature and extent of the contamination within OU-3, and potential for contaminants to migrate into the Las Vegas Wash.	40-60 hours



TASK	PURPOSE	GEOPENTECH'S ESTIMATED TIME
Phase 7 Groundwater Model	Will be used to evaluate the effectiveness of various cleanup methods in preventing contamination from reaching the Las Vegas Wash and the downstream Colorado River.	40-60 hours
Annual Meeting and Site Visit	Meet with NERT, NDEP, EPA, and other stakeholders in person to discuss the NERT Site remedial investigation and potential cleanup methods and tour the NERT Site.	20 hours/year
OU-3 Treatability Studies	Studies which are conducted in the lab or the field to assess the effectiveness of different remediation technologies on contaminated soil or groundwater.	24 hours
Proposed Plan for OU-1 and OU-2	Summarizes the proposed remediation alternatives and highlights the key factors that lead to identifying the final remediation methods.	40-60 hours
Other NERT/Endeavour Issues	Periodic reports, meetings, and correspondence regarding various issues relating to the investigation and cleanup at each site.	24 hours/month

GeoPentech's technical review and assistance with these tasks will greatly assist Metropolitan in providing critical input to the Trust, NDEP, and EPA, which will help ensure that the final remediation plan eventually selected for the NERT Site will: (1) fully address contaminants in both the soil and groundwater originating at and emanating from the site; (2) focus on necessary short- and long-term actions that will ensure full protection of the Las Vegas Wash and the downstream Colorado River; and (3) consider California's drinking water standards.

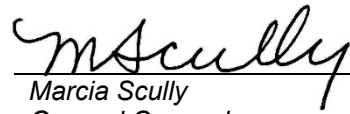
### ***Remediation of the Endeavour Site***

From 1997 to 2004, AMPAC installed several groundwater monitoring wells in areas adjacent to and downgradient from the Endeavour Site in order to determine the location of perchlorate in the groundwater. In June 2006, AMPAC began operating a treatment system to clean up perchlorate in the groundwater and prevent migration of perchlorate into the Las Vegas Wash. Subsequently, in 2015, Endeavour took over from AMPAC the operation of the treatment facility and the ongoing perchlorate remediation.

NERT's position is that Endeavour's perchlorate plume commingles with NERT's perchlorate plume in the northern part of OU-2 and in OU-3. (See **Attachment 3**.) However, Endeavour disagrees with NERT's claim that the two perchlorate plumes are commingling and says NERT's position is not supported by the data. In addition, Endeavour asserts that NERT overstates the amount of perchlorate from the Endeavour Site which gets into the Las Vegas Wash. Metropolitan, with GeoPentech's assistance, will continue to review and evaluate NERT's and Endeavour's reports and will work with NDEP and EPA to ensure that both sites take necessary and appropriate actions to prevent perchlorate from entering the Las Vegas Wash and the Colorado River.

**Requested Board Action**

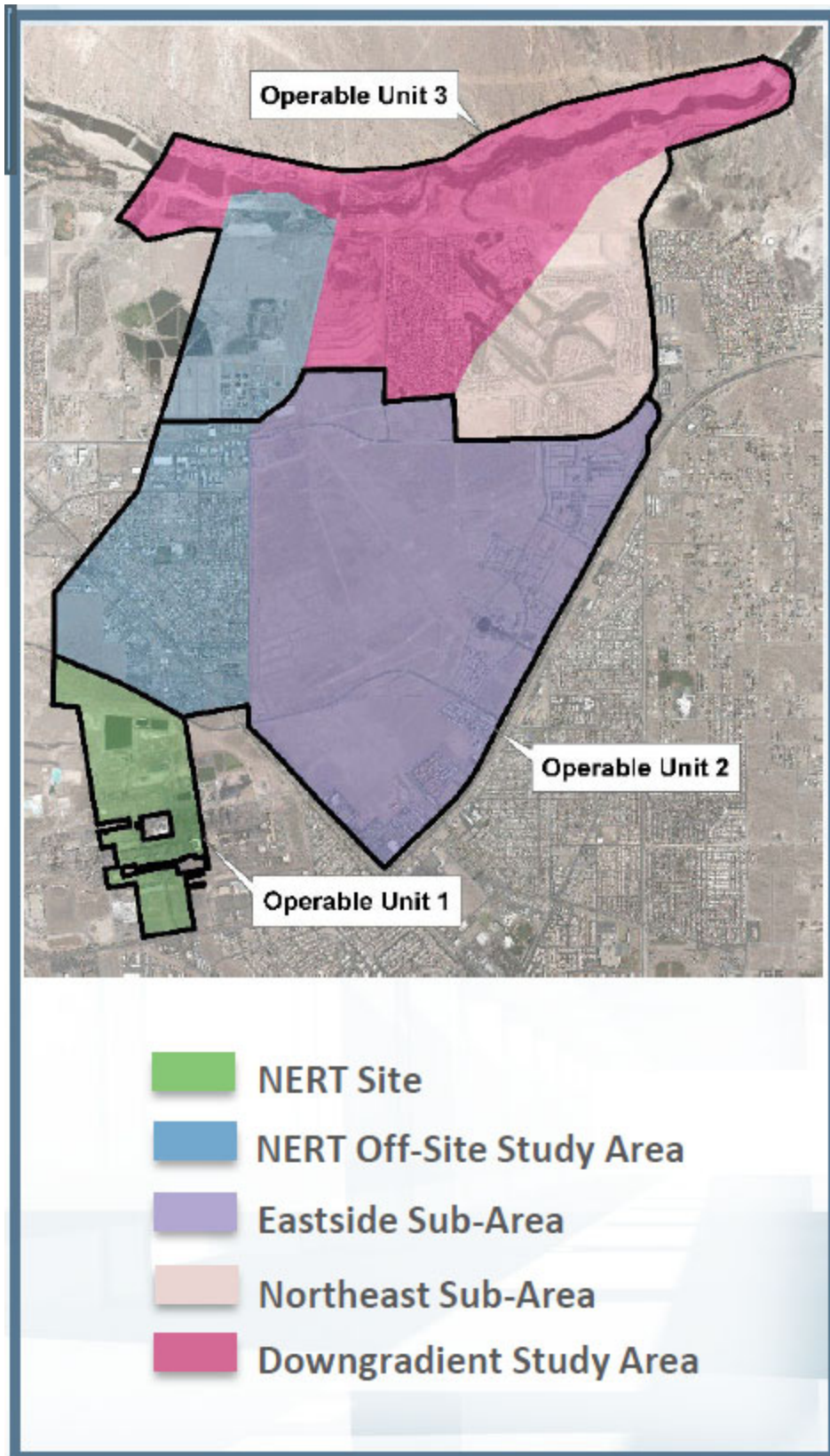
During the next several years, as the parties and the agencies work together to determine and implement the final remedy for the NERT Site and decide how best to address the Endeavour Site’s contribution of perchlorate to the Las Vegas Wash, GeoPentech’s geologic and hydrogeologic expertise in evaluating the various cleanup options will be invaluable. In order to fund GeoPentech’s continued participation in this critical work, this letter requests Board authorization to increase the authorized payment pursuant to the contract with GeoPentech by \$150,000 to a maximum amount of \$450,000.

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

12/26/2024  
\_\_\_\_\_  
Date

- Attachment 1 – Map of NERT Site and OUs**
- Attachment 2 – Remedial Action Objectives**
- Attachment 3 – NERT and Endeavour Perchlorate Plumes**

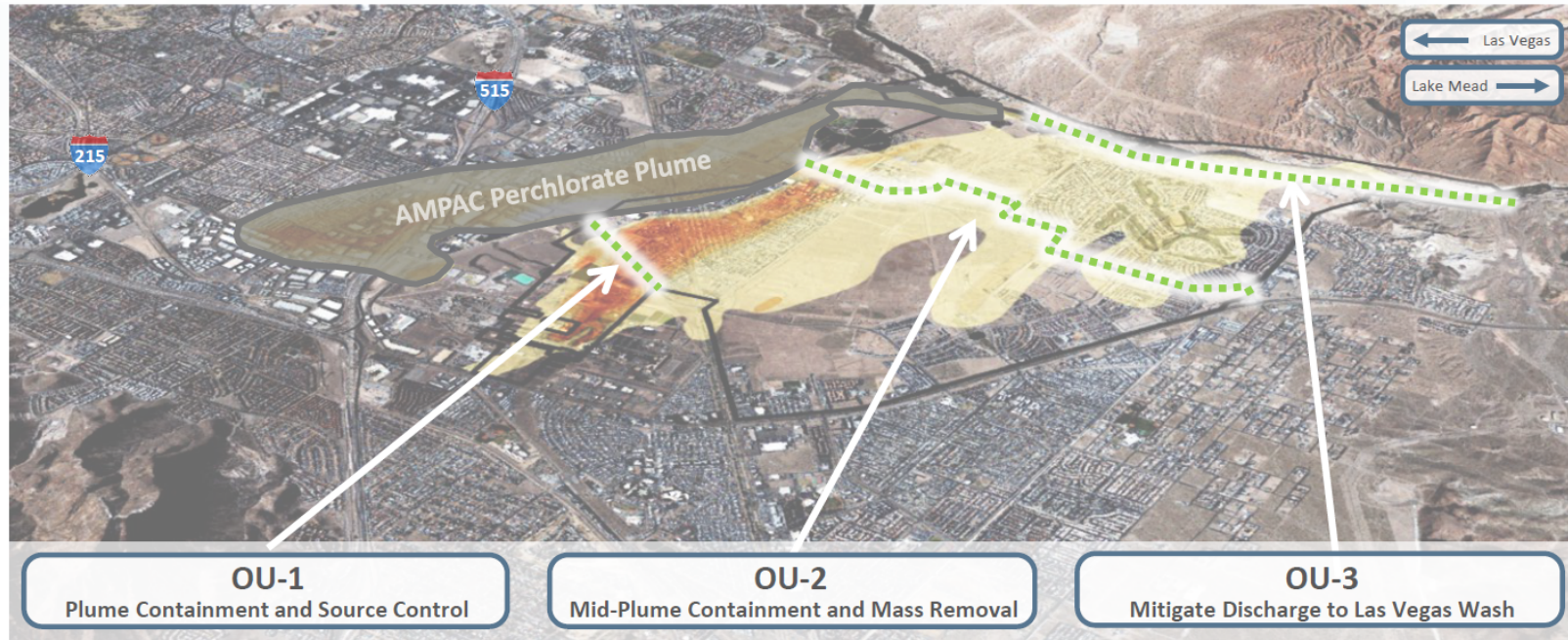
Ref# I12697554



Source: Nevada Environmental Response Trust

# NERT REMEDIAL PROGRAM SUMMARY

## REMEDIAL ACTION OBJECTIVES (RAOs)

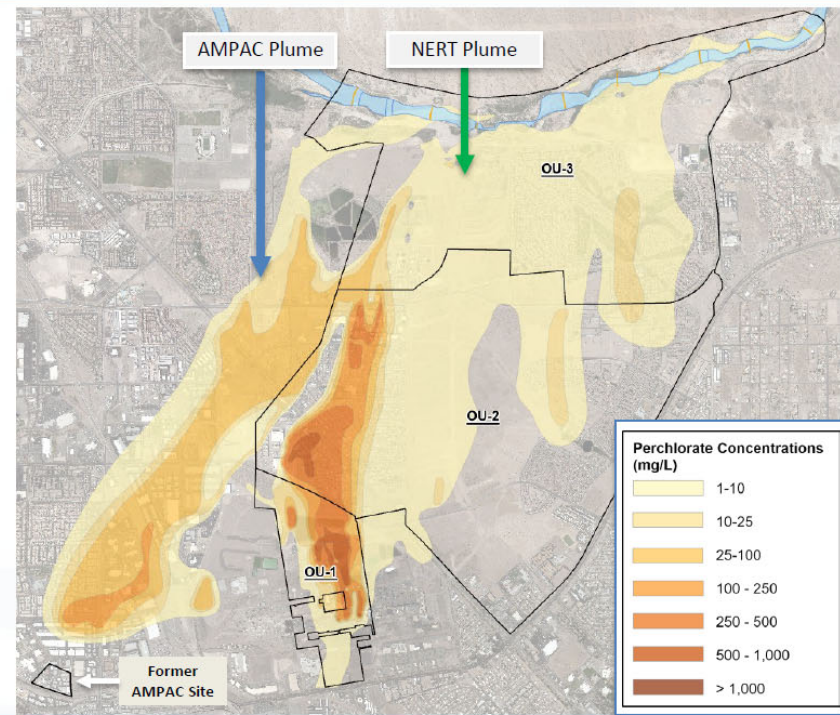




# OU-3 REMEDIAL INVESTIGATION: DELINEATION OF NERT PERCHLORATE

## SHALLOW PERCHLORATE PLUMES

- AMPAC perchlorate plume commingles with the NERT perchlorate plume in northern OU-2 and in OU-3
- NERT plume was delineated in OU-3 RI using the following lines of evidence:
  - Particle tracking using the approved Phase 6 groundwater model
  - Relative proportion of perchlorate vs chlorate in the plumes
  - Extent of chlorate and chromium plumes





Legal & Claims Committee

# Report on Nevada Environmental Response Trust Site and Request to Increase GeoPentech's Contract

Item 7-5

January 14, 2025

## Item # 7-5

### NERT Site Update and Continued Consulting Services

## Subject

Report on Nevada Environmental Response Trust Site and request to increase GeoPentech's contract from \$300,000 to \$450,000

## Purpose

Provide update on site investigation and remediation status and request additional funds to support consultant's current and anticipated future work

## Item # 7-5

### Continued Consulting Services on Key Hydrogeologic Issues

## Recommendation

Authorize increase in GeoPentech's contract from \$300,000 to \$450,000

## Fiscal Impact

\$150,000 for the authorized consulting services within the FY 2024/2025 budget

## Budgeted

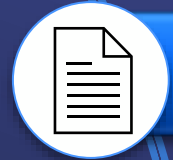
Funding Source: Legal Department Budget

## Presentation Length

11 minutes



# Overview



Background – Tronox & AMPAC Sites



GeoPentech's Technical Expertise



Tronox/NERT Site Remediation



AMPAC/Endeavour Site Remediation



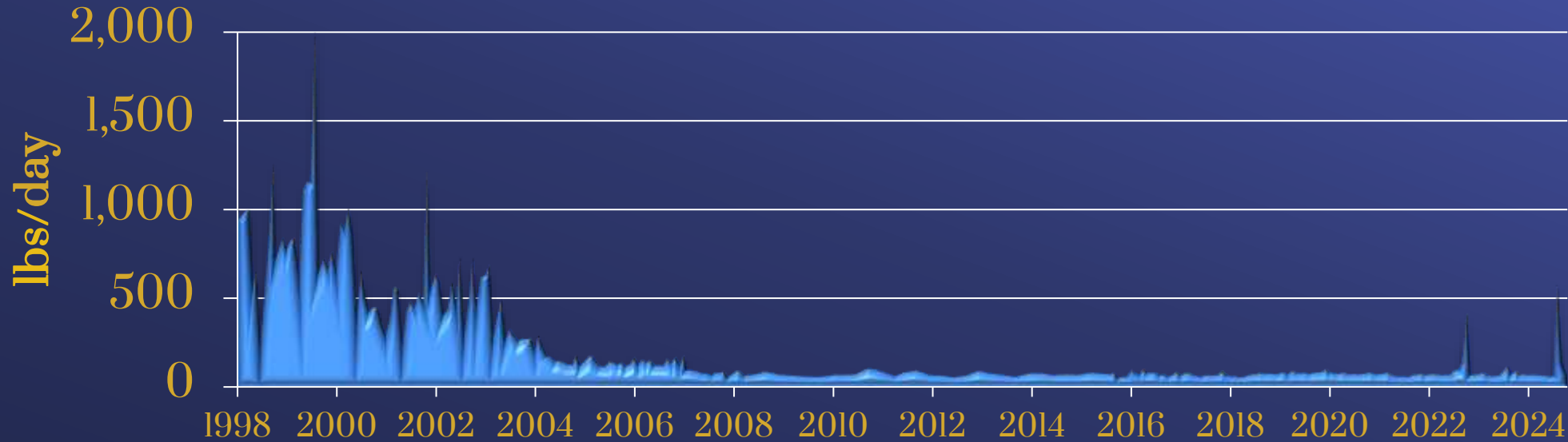
Next Steps

# Background

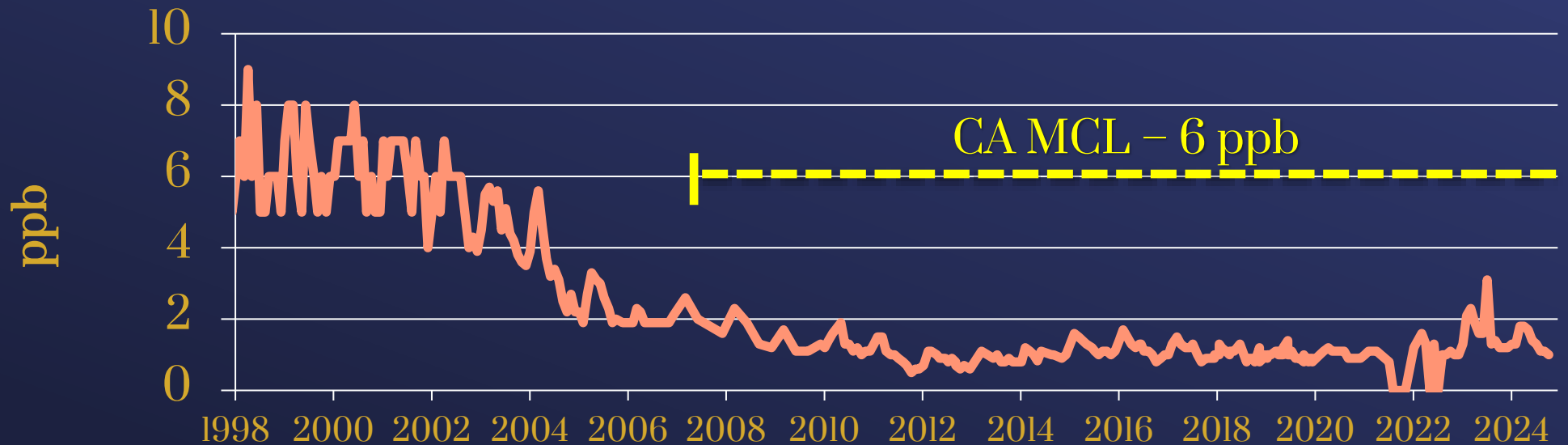
## Perchlorate Plumes in Henderson, NV



# Continued Decline in Perchlorate Levels

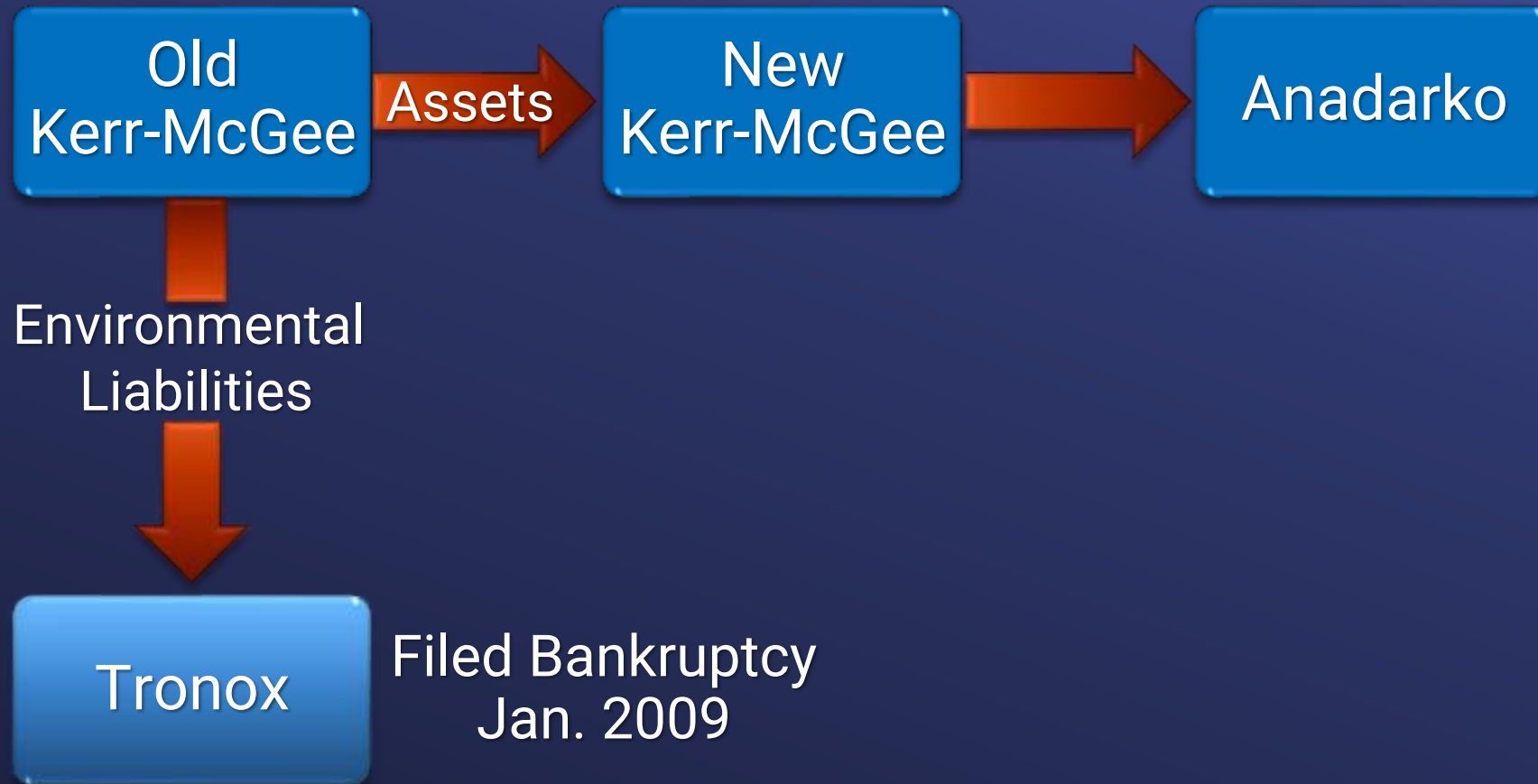


*Loading  
into Las  
Vegas  
Wash*



*Levels at  
CRA intake  
at Lake  
Havasu*

# Kerr-McGee's Reorganization





# Tronox Bankruptcy and Adversary Action



## Background

- May 2009: Tronox sued Anadarko & Kerr-McGee
- February 2011: Tronox bankruptcy settled
  - \$81 million Nevada Environmental Response Trust (NERT) formed
- April 2014: Adversary Action settled
  - \$1.1 billion for NERT Site
- Regulatory agencies: NDEP and EPA

## GeoPentech's Technical Services

- Extensive historical knowledge of NERT Site
- Specialized geologic and hydrogeologic expertise
  - Review technical documents and treatment options
  - Evaluate most efficient and cost-effective cleanup methods



# NERT Site Investigation and Remediation

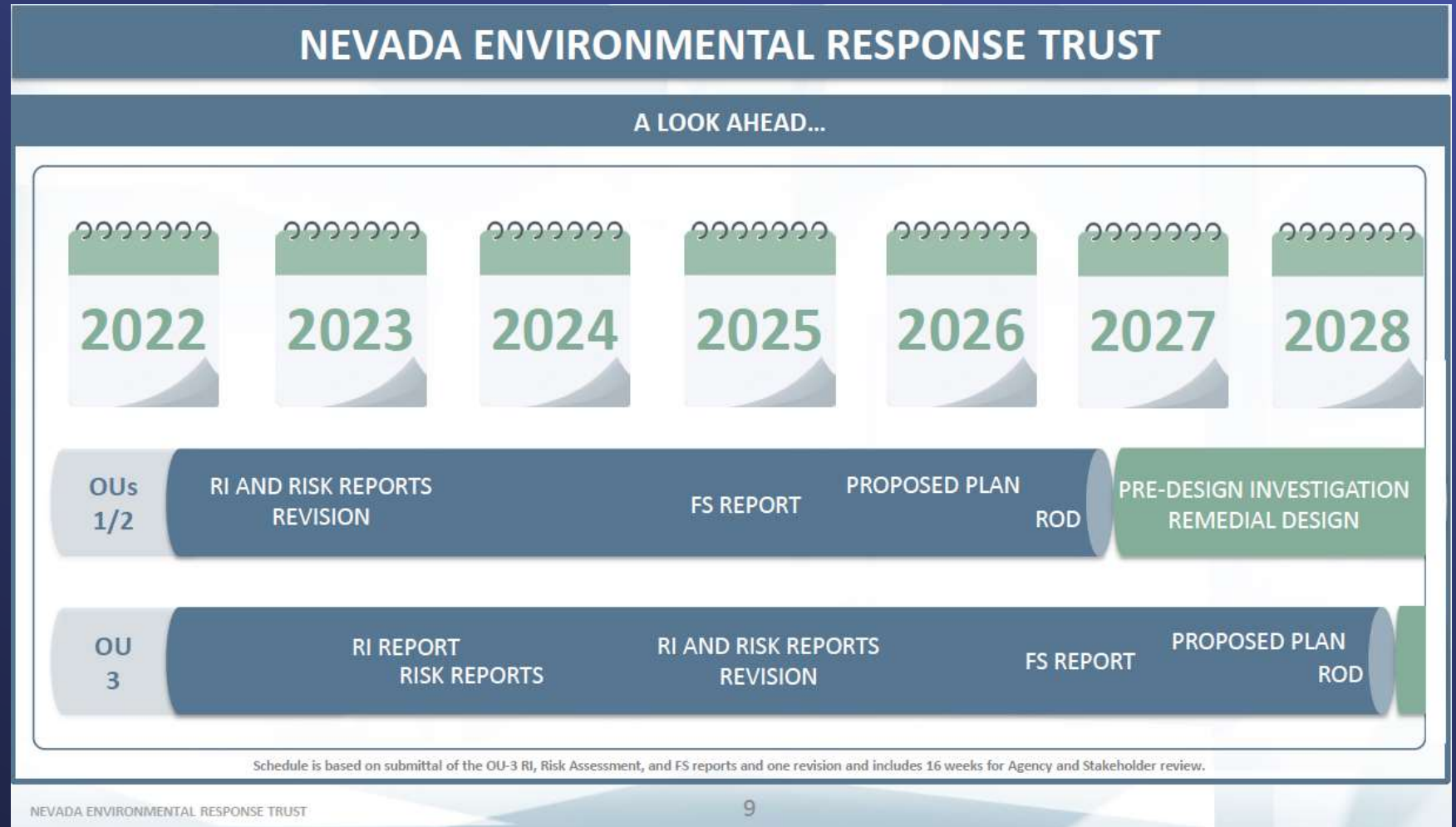
## NERT Pump & Treat System



- Operation of groundwater pump and treat system
- Groundwater model updates
- Remedial investigation reports
- Use of California's MCLs as cleanup standards

# NERT Site Investigation and Remediation

## GeoPentech's Assistance





# NERT Site Investigation and Remediation

## NERT Site Operable Units



## Endeavour's Groundwater Treatment System



# Endeavour Site Investigation and Remediation

- 2006: AMPAC began operating a groundwater treatment system
- 2015: Endeavour took over treatment facility and perchlorate remediation
- Present to ~2033: Source area onsite
- ~2033 to ~2043: Las Vegas Wash

## GeoPentech's Assistance

### Next Steps

- Continue to review and comment on investigation and remediation activities and reports
- Continue to participate in Stakeholder meetings and technical workshops
- Work with NDEP and EPA

## Board Options

- **Option #1**

Authorize an increase of \$150,000 to an amount not to exceed \$450,000 for an existing contract with GeoPentech, Inc. for consulting services

- **Option #2**

Do not amend the contract for consulting services with GeoPentech, Inc.

## Staff Recommendation

- Option #1

Authorize an increase of \$150,000 to an amount not to exceed \$450,000 for an existing contract with GeoPentech, Inc. for consulting services







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

1/14/2025 Board Meeting

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7-6

## Subject

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Report on litigation in Darren A. Reese v. Metropolitan Water District of Southern California, Riverside County Superior Court Case No. CVPS2204312, and authorize increase in the maximum amount payable under a contract for legal services with Seyfarth Shaw LLP in the amount of \$150,000 for a total amount not to exceed \$900,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

## Executive Summary

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This is a request from the General Counsel's Office to authorize an increase in the amount payable under a contract with Seyfarth Shaw LLP (Seyfarth) in Darren A. Reese v. Metropolitan Water District of Southern California, an employment case filed in Riverside County Superior Court in October 2022. The case resolved shortly before the October 2024 trial. In November 2024, the court entered dismissal of the case with prejudice. The requested contract increase of \$150,000, to a contract maximum not to exceed \$900,000, would fund Seyfarth's last portion of work on the case, including in connection with pre-trial motions, final discovery, settlement negotiations, and completing the settlement.

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

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### Staff Recommendation: Option #1

#### Option #1

Authorize increase in the maximum amount payable under a contract for legal services with Seyfarth Shaw LLP for Darren A. Reese v. Metropolitan Water District of Southern California, Riverside County Superior Court Case No. CVPS2204312, in the amount of \$150,000 for a total amount not to exceed \$900,000.

**Fiscal Impact:** Additional legal costs of \$150,000 funded by the self-insured retention fund.

**Business Analysis:** The requested increase would fund Seyfarth's last portion of work on the case, including completing settlement.

#### Option #2

Do not authorize the requested increase in the contract with Seyfarth Shaw LLP.

**Fiscal Impact:** None

**Business Analysis:** Metropolitan would not pay Seyfarth for work performed to Metropolitan's benefit, which the General Counsel's Office has determined was appropriate.

## Alternatives Considered

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Not applicable

## Applicable Policy

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Metropolitan Water District Administrative Code Section 6430(d): Powers and Duties (employment of attorneys)

Metropolitan Water District Administrative Code Section 6431: Authority to Obtain Expert Assistance (including special counsel)

Metropolitan Water District Administrative Code Section § 6433(e): Authority to Litigate, Compromise and Settle Claims by and Against the District

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

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

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Not applicable

## California Environmental Quality Act (CEQA)

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### 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(s) for Option #2:

None required

## Details and Background


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Employee Darren Reese filed his lawsuit in Riverside County Superior Court in October 2022. He alleged causes of action for gender and race harassment and discrimination, retaliation, and failure to prevent harassment, discrimination, and retaliation, all under the California Fair Employment and Housing Act. The General Counsel retained the Seyfarth law firm to defend Metropolitan in the case.

Over the nearly two years of litigating the case, the parties engaged in depositions, document productions, written discovery, and motion proceedings. In June 2023, the parties participated in an unsuccessful mediation. A jury trial was scheduled for October 2024. In June 2024, Metropolitan filed a motion for summary judgment or, in the alternative, summary adjudication, requesting the dismissal of all or part of the case before trial, which was to be heard by the court in September 2024.

In late August 2024, the parties reached a resolution of the case with the assistance of the mediator who conducted the June 2023 mediation. The resolution was within the authority of the General Manager and General Counsel under the Administrative Code. On September 3, 2024, the parties jointly requested that the court cancel the October 2024 trial and pre-trial hearings. The parties engaged in the required steps to complete the settlement through November 2024. On November 25, 2024, the court dismissed the case with prejudice.

Seyfarth's final invoices include its last portion of case work, including in connection with pre-trial motions, final discovery, settlement negotiations, and settlement completion. The General Counsel's Office reviewed the final invoices and obtained Seyfarth's agreement to reasonable reductions. The requested contract increase of \$150,000, for a total amount payable under the contract of \$900,000, will complete Metropolitan's payment obligations to Seyfarth for its defense of this case. The General Counsel's Office has determined that payment of \$150,000 to fund Seyfarth's final case work is appropriate.

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

12/30/2024

Date





Legal and Claims Committee

# Report on Reese v. MWD; and Authorize Contract Increase

Item 7-6

January 14, 2025

## Item #7-6

# Report and Contract Increase Request

### Subject

Report on litigation in *Reese v. Metropolitan*, and authorize increase in the maximum amount payable under a contract with Seyfarth Shaw LLP in the amount of \$150,000 for a total amount not to exceed \$900,000

### Purpose

Provide update on litigation and request additional funds to pay final invoices for highly qualified counsel resolve the litigation

### Recommendation and Fiscal Impact

Approve contract increase of additional \$150,000 funded by the self-insured retention fund

# Update

## *Reese v. Metropolitan*

- Reese filed litigation October 2022
- June 2023 Unsuccessful Mediation
- June 2024 Metropolitan files Motion for Summary Judgment
- August 30, 2024 – parties agree to terms of settlement
- November 25, 2024 – litigation dismissed with prejudice

# Request for Increase

## Seyfarth Shaw LLP

- Fund last portion of work on the case, including:
  - Pretrial motions
  - Final discovery
  - Motion for summary judgment
  - Settlement negotiations
  - Settlement completion

# Board Options

## Option 1:

- Authorize increase in the maximum amount payable under a contract for legal services with Seyfarth Shaw LLP for Darren A. Reese v. Metropolitan Water District of Southern California in the amount of \$150,000 for a total amount not to exceed \$900,000

## Option 2:

- Do not authorize the requested increase in the contract with Seyfarth Shaw LLP

# Board Options

## Staff Recommendation

- Option 1







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

1/14/2025 Board Meeting

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7-7

## Subject

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Authorize increase of \$200,000, to a maximum amount payable of \$600,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA

## Executive Summary

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The General Counsel entered into a contract with the law firm of Olson Hagel & Fishburn LLP (Olson Hagel) on July 1, 2014, for \$50,000 to provide Metropolitan with general government law advice related to the Political Reform Act (PRA), the Fair Political Practices Commission (FPPC) regulations, conflict of interest law and other legislative and ethics matters. The firm focuses on election and political law, campaign reporting, conflicts of interest, ethics, lobbying and other public law matters. In 2020 the name of the firm was changed to Olson Remcho LLP. Lance Olson continues to perform most of the work under the contract.

Under this contract, the firm provides valuable advice and assistance to Legal and the Ethics Office on an as-requested basis. As part of the contract, the firm serves as Metropolitan's designated agent for the required electronic filing of Lobbyist Reports under the PRA, and regularly reviews and files these reports with the FPPC for Metropolitan. The firm also provides the General Counsel and, in some cases, the General Counsel and the Ethics Officer advice regarding the interpretation and requirements of the PRA and related laws applicable to public agencies and officials. The firm provided Brown Act training to the Board in January 2021 and assisted in responding to additional questions from the Board regarding the training and related matters.

The agreement was amended on November 1, 2016, to increase the maximum amount payable to \$100,000; in August 2018 by \$100,000 to a maximum amount payable of \$200,000; in July 2021 by \$100,000 to a maximum amount payable of \$300,000 and in January 2023 by \$100,000 to a maximum amount payable of \$400,000. This letter requests an increase of \$200,000 to a maximum amount payable of \$600,000 so that Olson Remcho LLP can continue to provide these legal services for Metropolitan. This agreement remains in effect until terminated. While the rate of expenditure is subject to the number and nature of matters requiring assistance from the firm, it is anticipated that the requested increase will be adequate for an additional year to 18 months.

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

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### Staff Recommendation: Option #1

#### Option #1

Authorize the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$200,000 to a maximum amount payable of \$600,000.

**Fiscal Impact:** The sum of \$200,000 is added to this agreement for the provision of the authorized legal services, funded within the FY 2024/25 budget.



**Business Analysis:** Metropolitan will retain the expertise needed for general government law advice including conflicts and lobbying.

**Option #2**

Do not authorize an increase in the maximum amount payable under this agreement with Olson Remcho LLP, effectively terminating this contract when the current funds are exhausted.

**Fiscal Impact:** None

**Business Analysis:** Metropolitan will not have access to the valuable expertise and assistance provided by this law firm.

**Alternatives Considered**

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Not applicable

**Applicable Policy**

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Metropolitan Water District Administrative Code Section 6430: General Counsel’s employment of attorneys to render special counsel services

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

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

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Not applicable

**California Environmental Quality Act (CEQA)**

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**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(s) for Option #2:**

None required

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

12/27/2024  
Date

Ref# 112704942



## Legal & Claims Committee

# Request to Authorize Increase in Special Counsel Contract for General Government Law Advice

Item #7-7

January 14, 2025

# Item 7-7

## Request for Contract Increase

### Subject

Authorize increase of \$200,000, to a maximum amount payable of \$600,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters

### Purpose

Request additional funds to continue engagement of highly qualified counsel

### Recommendation and Fiscal Impact

Approve contract increase of additional \$200,000 funded within the FY 2024/25 budget

## Special Counsel

# Request for Additional Funds for Special Counsel

- Request to increase existing contract with Olson Remcho LLP
- First retained in 2014
- Increases to contract maximum authorized in 2016, 2018, 2021 and 2023

Specialized  
Legal  
Support

## Olson Remcho LLP

- Political Reform Act (PRA)
- Fair Political Practices Commission (FPPC) Regulations
- Conflict of Interest Law
- Metropolitan's Lobbyist Reports
- Other Legislative and Ethics Matters

# Board Options

- **Option #1**  
Authorize the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$200,000 to a maximum amount payable of \$600,000.
- **Option #2**  
Do not authorize an increase in the maximum amount payable under this agreement with Olson Remcho LLP, effectively terminating this contract when the current funds are exhausted.

# Board Options

## Staff Recommendation:

- Option 1









Schonbrun Seplow Harris  
Hoffman & Zeldes, LLP

RECEIVED

MAY 13 2024

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
LEGAL DEPARTMENT

**CONFIDENTIAL**

May 13, 2024

**VIA HAND DELIVERY**

Metropolitan Water District of Southern California  
700 North Alameda Street  
Los Angeles, CA 90012  
Attn.: General Counsel Marcia Scully

Re: *Heather Beatty v. Metropolitan Water District of Southern California*  
Claim Pursuant to Government Code Section 910, et seq.  
Demand Under Labor Code Section 2802 and Government Code Sections 825,  
et seq. and 995, et seq.

To Metropolitan Water District of Southern California:

This letter constitutes a claim on behalf of Heather Beatty pursuant to Government Code Section 910, et seq., with respect to claims arising from ongoing retaliation and other violations of law suffered during her employment with Metropolitan Water District of Southern California ("MWD"). This letter also contains a demand under Labor Code Section 2802 and Government Code Sections 825, et seq. and 995, et seq. Below are details of Ms. Beatty's claim and demand against MWD.

*As a preliminary matter, please notify me immediately if MWD will require my office to deliver this claim and demand to the Executive Secretary of the MWD Board of Directors.* Ms. Beatty is aware that more routine claims such as for property damage are so delivered, but that the claims are then circulated among numerous MWD staff across departments. Because of the nature of this claim and demand, that type of circulation would be inappropriate and further damage Ms. Beatty. Moreover, Ms. Beatty is aware that other employment claims made under Government Code Section 910, et seq. have been delivered directly to the Legal Department and have been accepted.

**The name and post office address of the claimant:**

Heather C. Beatty, Esq.  
c/o Wilmer J. Harris, Esq.  
Schonbrun Seplow Harris Hoffman & Zeldes LLP  
715 Fremont Avenue, Suite A  
South Pasadena, CA 91030  
Tel.: (626) 441-4129

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715 Fremont Avenue, Suite A, South Pasadena, CA 91030  
Tel.: (626) 441-4129 | Fax: (626) 283-5770 | www.sshhzlaw.com

Fax: (626) 283-5770

**The post office address to which the person presenting the claim desires notices to be sent:**

Wilmer J. Harris, Esq.  
Schonbrun Seplow Harris Hoffman & Zeldes LLP  
715 Fremont Avenue, Suite A  
South Pasadena, CA 91030  
Tel.: (626) 441-4129  
Fax: (626) 283-5770

**The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted.**

**A. Heather Beatty Is An Exemplary Attorney and MWD Employee.**

Heather Beatty began working for MWD's Legal Department in 2008 as a Senior Deputy General Counsel, after a successful career in private practice including partnership at the international law firm Bingham McCutchen, where MWD was one of her clients. Her lifelong pattern of academic and professional success, conducted with integrity, continued unabated at MWD and she was promoted to an Assistant General Counsel in 2012, placing her as part of MWD's executive management. Ms. Beatty has always provided exemplary service to MWD, resulting in increasing responsibilities and professional acknowledgement and respect. Throughout her tenure at MWD, Ms. Beatty has received the highest rating, "outstanding," in every evaluation.

Ms. Beatty has provided legal representation to MWD on litigation, finance, labor/employment, governance, external affairs, technology, and operational matters, and until recent years on ethics matters as well. She has overseen litigation and finance work of Legal, including managing a series of complex and significant finance cases that have resulted in savings for MWD of over \$500 million in recent years and billions of dollars going forward. Ms. Beatty also assists the General Counsel in managing the Legal Department (which consists of about twenty attorneys, as well as other staff).

**B. MWD Retaliates Against Ms. Beatty for Engaging in Protected Whistleblowing Conduct and Engages in Other Unlawful Conduct Against Her.**

MWD should be well aware of the whistleblowing report Ms. Beatty made on February 25, 2022, which she expanded upon on June 30, 2022 and July 13, 2022, and which was preceded by Ms. Beatty's unsuccessful efforts beginning in December 2021 to prevent Ethics officials' violations of law and ethical standards. In summary, Ms. Beatty engaged in conduct protected by Labor Code Section 1102.5 and the Fair Employment and Housing Act ("FEHA"), among other laws and regulations, by acting in compliance with local, state, and federal law; refusing to engage in unlawful and unethical conduct at MWD; and reporting unlawful conduct. In 2023, Ms. Beatty also made a report and sought the correction of false information that had

been submitted to a government agency on MWD's behalf, which too was conduct protected by Labor Code Section 1102.5.

In retaliation for Ms. Beatty's protected conduct, MWD has subjected Ms. Beatty to a campaign of retaliation, defamation, and harassment and discrimination due to her gender that has caused her significant emotional distress and diminished and harmed her professional reputation and potentially her livelihood.

Specifically, Ethics Officer Abel Salinas and Assistant Ethics Officer Peter von Haam failed and refused to comply with the California Public Records Act, sought to force Ms. Beatty's violation of that law, engaged in a series of other unlawful and unethical conduct, and made false and defamatory internal and external statements about Ms. Beatty's work performance and professional integrity, as a result of her protected conduct beginning in December 2021 and her whistleblower report in February 2022. Upon information and belief, the false and defamatory statements continue to the present day.

Rather than address Ms. Beatty's whistleblower report properly and with due care, MWD unreasonably and it appears deliberately mishandled the matter. That this was occurring was signaled by the fact that Director Marsha Ramos - the director with oversight responsibility over Ethics, who received Ms. Beatty's whistleblower report, and was one of three directors assigned to the ad hoc committee of the Board of Directors that was charged with handling most of the report - engaged in gratuitous, effusive public praise of the Ethics Officer while the matter was under investigation. The ad hoc committee then issued to Ms. Beatty a series of contradictory and pretextual closing communications over several months. The final closing communication of the ad hoc committee, labeled a "draft," revealed that in contrast to representations in earlier closing communications, many of Ms. Beatty's allegations in fact were ignored and were only addressed against one of the two respondents (without identifying which). That communication also confirmed that contrary to earlier closing communications that nothing she alleged was substantiated, it was in fact substantiated that "the respondent" was found to have prevented Ms. Beatty's compliance with the law on behalf of MWD, as she reported. Inexplicably, this unlawful conduct by MWD's Ethics official(s) was stated to nevertheless be acceptable, without identifying who had made such an extraordinary decision on behalf of MWD with future significant repercussions for MWD's operations.

The ad hoc committee also stated that they "understand" (although apparently did not bother to confirm) that a portion of Ms. Beatty's complaint was being handled by the EEO Officer: EEO allegations regarding the Assistant Ethics Officer. Yet, EEO Officer Jonaura Wisdom failed and refused to provide any communication to Ms. Beatty about this whatsoever. Moreover, the EEO Officer failed to afford Ms. Beatty any of the mandated retaliation protections, even while the EEO Office informed the Board that it always does so. Ms. Beatty is informed and believes based on the EEO Office's required protocols to involve its independent counsel, that the EEO Officer's independent counsel Camille Hamilton Pating of Meyers Nave participated in this retaliatory mistreatment of Ms. Beatty.



When Ms. Beatty elevated to Chair of the Board Adan Ortega the failure and refusal of MWD to address many of her serious allegations and the conclusion on behalf of MWD that Ethics official(s) may violate the law and force others to do so, neither the Chair nor anyone else on behalf of MWD addressed this. The Chair simply ignored Ms. Beatty's last communication on the topic in December 2023, just as the ad hoc committee had ignored her communications in October and November 2023.

In addition, beginning in January 2023, Ms. Beatty reported misrepresentations made to a government agency on MWD's behalf and sought for this to be corrected, and was retaliated against for doing so. In connection with her litigation responsibilities, Ms. Beatty learned that Ms. Hamilton Pating on behalf of the EEO Officer had submitted to the California Civil Rights Department ("CRD") a complaint response of MWD that contained multiple incorrect and misleading statements. The CRD case was still open and this was fixable. Ms. Beatty notified her manager General Counsel Marcia Scully, Redacted

[REDACTED] Ms. Hamilton Pating was very hostile about this. The incorrect and misleading response was never corrected, that CRD case was closed with the response standing as the official statement of MWD, and it may become a factor in pending litigation to MWD's (and the General Manager's) detriment. Among the inaccuracies in the response is the omission of the General Manager's involvement despite a direct question by the CRD, his own public statements about his involvement, and the fact that the EEO Officer recused herself because of his involvement. Also among the incorrect statements was that the Board of Directors considered a matter and took an action that never occurred.

Moreover, Ms. Beatty has suffered unlawful harassment and discrimination based on her gender. In the course of her work, MWD subjected Ms. Beatty to hostile, demeaning treatment that her male counterparts did not suffer and caused the diminishment of her responsibilities and marginalization due to her gender. Ms. Beatty's report of harassment due to gender was mishandled, and it was ignored entirely as to at least one respondent. The gender harassment has continued and Ms. Beatty has subsequently experienced gender discrimination as well.

MWD's campaign of retaliation against Ms. Beatty and other mistreatment has eroded her well-earned reputation for professionalism and integrity among MWD management and executive leadership in the period from December 2021 to the present. For example and notably,

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<sup>1</sup> Ms. Beatty's and the General Counsel's communications with Ms. Hamilton Pating are not privileged. The Legal Department, which represents MWD, has no professional relationship with Ms. Hamilton Pating. Pursuant to Board direction, she is independent counsel for the EEO Officer, and the General Manager has also made her his own employment counsel. And in this situation in particular, there was no common interest in an incorrect and misleading submission to a government agency.

on March 12, 2024, the General Manager and the Chair of the Board continued the ongoing pattern of retaliation, defamation, and gender harassment and discrimination in an egregious fashion by falsely accusing Ms. Beatty of misconduct while she was giving a presentation to the Legal and Claims Committee of the Board about four employment cases which she was responsible for managing on behalf of MWD.<sup>2</sup>

Redacted

Redacted

The statements were knowingly false. As the General Manager well knows, the investigation findings (which Ms. Beatty had no involvement in) are in writing, the General Manager was briefed on the findings by management and engaged in decision making on behalf of MWD as a result, and the findings have been known to him for nearly three years. Redacted

As the Chair of the Board well knows, Ms. Beatty did not withhold any investigation reports from the Board and instead it was the Ethics Officer - who oversaw and was responsible for the investigations - who did so. Indeed, the Chair knows that part of Ms. Beatty's unaddressed whistleblower report is that in 2022 after directors requested the investigation reports, the Ethics Officer and Assistant Ethics Officer created false "summaries" and provided these to the Board instead of providing the reports; tried to force Ms. Beatty's participation in that effort and retaliated against her for refusing to participate; and suggested she misrepresent the falsified documents as supposed compliance with Public Records Act requests for the reports.

Despite the outrageous and unfounded attacks on Ms. Beatty while she tried to fulfill her work requirements, Redacted

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<sup>2</sup> While these statements occurred in closed session, they are not privileged for at least two reasons: (1) they are not part of the proper scope of the closed session; and (2) the Chair of the Board, upon advice of outside counsel, has taken the position on behalf of MWD that a whistleblower may discuss statements made in closed session. Ms. Beatty's discussion of this information is as a whistleblower.

Shockingly, immediately after the meeting and despite Ms. Beatty being visibly upset, the General Manager continued this campaign against Ms. Beatty when he blocked her from gathering her belongings; then placed and held his hand on her shoulder, holding her in place in an aggressive and intimidating manner; and as he did so, got close to her face and said he needed to defend himself. His offensive and threatening physical action and restraint of Ms. Beatty was outrageous and extraordinarily upsetting. It was extreme enough that an employee who witnessed the incident from across the room sent Ms. Beatty an unsolicited email shortly after, documenting what he saw and noting others were watching intently too.

The General Manager and the Chair of the Board are clearly pleased with their attack on Ms. Beatty and their success in causing Ms. Beatty distress, which was apparent. Neither has said anything to Ms. Beatty about what they did on March 12 - not one word of apology, explanation, or concern, or even any acknowledgement of what occurred. However, both continue to make public statements professing to care about all employees and employees' safety and work environment. And the Chair continues to make laudatory public remarks about the Ethics Officer.

Notably, four high-level staff of the General Manager who have leadership roles in addressing mistreatment of employees were present in the March 12 meeting and observed what occurred. None have contacted Ms. Beatty about this either, clearly following the General Manager's lead that she is an employee who is to be devalued, mistreated, and marginalized. In contrast, multiple directors reached out to Ms. Beatty thanking her for speaking truthfully and expressing support.

As a result of continued unwarranted attacks on Ms. Beatty's professional ability and integrity and other mistreatment, and her own need to not be in the position of being forced to violate the law or further attacked, Ms. Beatty has been subjected to further limitations on her work for MWD, reduction of her position and responsibilities, yet more diminution of her opportunities for continued advancement and promotion, and marginalization.<sup>3</sup>

**The name or names of the public employee or employees causing the injury, damage, or loss, if known.**

Abel Salinas; Peter von Haam; Directors Marsha Ramos and Cynthia Kurtz, and former Director Richard Atwater (agents of MWD, assigned responsibilities of MWD as ad hoc committee members); Jonaura Wisdom; Adan Ortega (agent of MWD, assigned responsibilities of MWD including over ad hoc committee members); Adel Hagekhalil; Camille Hamilton Pating (Meyers Nave, acting on behalf of and in concert with her clients Jonaura Wisdom and Adel Hagekhalil).

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<sup>3</sup> Ms. Beatty can provide more specific information about the facts underlying her claim as requested.



**A general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim.**

Ms. Beatty has suffered and continues to suffer substantial economic losses (in the form of the reduction and instability of her existing position and diminished career prospects) and severe emotional injuries as a direct and proximate result of conduct by employees and agents of MWD. As a result of the above-discussed conduct, Ms. Beatty will bring causes of action that include, but are not limited to, retaliation in violation of Labor Code Section 1102.5; gender harassment, discrimination, and retaliation in violation of FEHA; failure to prevent gender harassment, discrimination, and retaliation in violation of FEHA; defamation; battery; false imprisonment; negligent supervision; intentional infliction of emotional distress; and other state and federal civil rights violations, among other claims.

**Superior Court Jurisdiction.**

Ms. Beatty's damages are far in excess of the minimum jurisdiction of the Los Angeles County Superior Court.

**Cessation of Retaliation and Other Unlawful Conduct.**

*Please ensure that retaliation and other unlawful conduct against Ms. Beatty ceases immediately.* Due to her above-stated experience, Ms. Beatty cannot utilize MWD's internal complaint procedures without facing further and more severe retaliation and other mistreatment, all while any such complaint is mishandled and/or ignored. Therefore, this claim and subsequent legal action are the only way she can attempt to protect herself.

**Demand Under Labor Code Section 2802 and Government Code Sections 825, et seq. and 995, et seq.**

Ms. Beatty hereby makes a demand for MWD's payment and indemnity for all necessary expenditures and losses, including but not limited to attorney's fees for her defense and all other reasonable costs, that she incurs as a result of pending California State Bar Case No. 22-O-12952.

On November 14, 2023, Ms. Beatty learned that Assistant Ethics Officer Peter von Haam had filed a false and retaliatory complaint about her with the California State Bar in 2022 as a result of her above-described protected activity. Ms. Beatty engaged in no professional misconduct and instead at all times acted properly within the course and scope of her employment with MWD and in the proper discharge of her duties for MWD. Ms. Beatty is legally entitled to MWD's payment and indemnity for all expenditures and losses that she necessarily incurs as a result of the complaint.

On November 15, 2023, General Counsel Marcia Scully by email informed Chair of the Board Adan Ortega **Redacted**

**Redacted**  
Ms. Beatty's response to the



Metropolitan Water District of Southern California  
May 13, 2024  
Page 8

complaint was submitted to the State Bar by her legal counsel on March 4, 2024, the matter is pending, and it may be pending for years.

Based on the above-described events and in particular the retaliatory and defamatory conduct of the Chair of the Board on March 12, 2024, Ms. Beatty does not wish to rely solely on the email statement of the Chair regarding authorization for MWD's payment of the defense. Accordingly, Ms. Beatty makes this formal demand for MWD's payment and indemnity for all expenditures and losses, including costs of defense, associated with Case No. 22-O12952.

**Requested Communication to the Board of Directors.**

We request that this letter be provided to the MWD Board of Directors promptly and confidentially.

Sincerely,

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP



Wilmer J. Harris