

# The Metropolitan Water District of Southern California

# Agenda

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

## L&C Committee

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

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

Meeting with Board of Directors \*

**October 12, 2021**

**9:00 a.m.**

Agendas, live streaming, meeting schedules, and other board materials are available here: <https://mwdh2o.legistar.com/Calendar.aspx>. If you have technical difficulties with the live streaming page, a listen-only phone line is available at 1-877-853-5257; enter meeting ID: 862 4397 5848. Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 815 2066 4276 or click <https://us06web.zoom.us/j/81520664276pwd=a1RTQWh6V3h3ckFhNmduUWpKR1c2Zz09>

## **Tuesday, October 12, 2021 Meeting Schedule**

**09:00 am - L&C  
10:00 am - RP&AM  
11:00 am - Adj Exec  
11:30 am - Break  
12:00 pm - Board**

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

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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 REPORTS**

a. General Counsel's report of monthly activities

[21-523](#)

**Attachments:** [10122021 LC 2a Report - Revised](#)

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

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

- A. Approval of the Minutes of the Meeting of the Legal and Claims Committee held September 14, 2021 [21-543](#)

**Attachments:** [10122021 LC 3A Minutes.pdf](#)

**4. CONSENT CALENDAR ITEMS - ACTION**

- 7-12 Authorize settlement of OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; 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)] [Item Added on 10/8/2021] **21-562**

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

**5. OTHER BOARD ITEMS - ACTION**

None

**6. BOARD INFORMATION ITEMS**

None

**7. COMMITTEE ITEMS**

- a. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action and the first 2016 action. [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] [21-522](#)

**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. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. 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 <http://www.mwdh2o.com>.

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.



**Other Matters**

**Continuing Education**

On September 30, the Legal Department hosted a webinar training entitled "Appendix A/Financial Disclosure Training." The training was provided by the law firm of Stradling Yocca Carlson & Rauth,

Metropolitan's outside bond disclosure counsel. This training, which was designed for Metropolitan employees who contribute or otherwise participate in the preparation of Metropolitan's Appendix A, was attended by Legal Department staff, several managers, and staff from different departments.

**Matters Received by the Legal Department**

<u>Category</u>	<u>Received</u>	<u>Description</u>	<u>Documents Requested</u>
Requests Pursuant to the Public Records Act	9	<u>Requestor</u>	
		AFSCME Local 1902	Plant files relating to Lake Skinner operators
		Center for Contract Compliance (3 requests)	Certified payroll records from July 2020 to June 2021 and fringe benefit statement for Summit Landcare for (1) landscape maintenance, tree trimming and herbicide applications for South Orange County Distribution Facilities; (2) landscape maintenance, tree trimming and herbicide applications for North Orange County Distribution Facilities; and (3) Live Oak Reservoir landscape maintenance and tree trimming services
		Environmental Science Associates	Data on water treatment amounts at Weymouth Water Treatment Plant
		Gary G. Kreep, Attorney-at-Law	Records relating to Metropolitan's interests in site located in the Ormond Beach area in the City of Oxnard
		ICF	Contract, proposals and evaluation materials for Regional Recycled Water Program - Environmental Planning Support
		Padre Associates	Records on presence of any water pipelines located near proposed new school site the city of Fontana
		Private Citizen	Geologic report by V. P. Pentegoff dated October 20, 1956 on construction/ installation of MWD's pipeline through Anaheim Hills
Other Matters	1	Wage garnishment	



<b>Bay-Delta and SWP Litigation</b>	
<b>Subject</b>	<b>Status</b>
<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 Earl)</p>	<ul style="list-style-type: none"> <li>• <b>Validation Action</b> <ul style="list-style-type: none"> <li>• Metropolitan, Mojave Water Agency, Coachella Valley Water District, and Santa Clarita Valley Water Agency have filed answers in support</li> <li>• Kern County Water Agency, Tulare Lake Basin Water Storage District, Oak Flat Water District, County of Kings, Kern Member Units &amp; Dudley Ridge Water District, and City of Yuba City filed answers in opposition</li> <li>• North Coast Rivers Alliance et al., Howard Jarvis Taxpayers Association, Sierra Club et al., County of Sacramento &amp; Sacramento County Water Agency, CWIN et al., Clarksburg Fire Protection District, Delta Legacy Communities, Inc, and South Delta Water Agency &amp; Central Delta Water Agency have filed answers in opposition</li> <li>• Case ordered consolidated with the DCP Revenue Bond CEQA Case for pre-trial and trial purposes and assigned to Judge Earl for all purposes</li> <li>• Sierra Club, DWR, North Coast Rivers Alliance and Public Agencies’ motions for summary judgment on CEQA affirmative defenses to be heard Dec. 17, 2021</li> </ul> </li> <li>• <b>CEQA Case</b> <ul style="list-style-type: none"> <li>• Sierra Club, Center for Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge filed a standalone CEQA lawsuit challenging DWR’s adoption of the bond resolutions</li> <li>• Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project</li> <li>• Cases ordered consolidated for pre-trial and trial purposes</li> <li>• Sierra Club motion for summary judgment on CEQA cause of action hearing on Dec. 17, 2021</li> </ul> </li> </ul>



<p><b>SWP-CVP 2019 BiOp Cases</b></p> <p><i>Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Raimondo, et al. (PCFFA)</i></p> <p><i>Calif. Natural Resources Agency, et al. v. Raimondo, et al. (CNRA)</i></p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Drozd)</p>	<ul style="list-style-type: none"> <li>• SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases</li> <li>• Briefing on federal defendants' motion to dismiss CNRA's California ESA claim is complete; no hearing date set and may be decided on the papers</li> <li>• Federal defendants circulated administrative records for each of the BiOps</li> <li>• December 18, 2020 PCFFA and CNRA filed motions to complete the administrative records or to consider extra-record evidence in the alternative</li> <li>• Federal defendants reinitiated consultation on Oct 1, 2021</li> <li>• <u>Federal defendants and state plaintiffs announced they will file a motion on November 9, 2021 to stay the cases until September 2022 and to adopt an interim operations plan for the coming year</u></li> <li>• <u>Court ordered federal defendants and state plaintiffs to provide any analysis of the interim operations plan to other parties, including intervenors</u></li> <li>• <u>Briefing on PCFFA et al.'s motion to complete the administrative records has resumed and will be complete by Nov. 22, 2021</u></li> </ul>
<p><b>CESA Incidental Take Permit Cases</b></p> <p><b>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</b></p> <p><i>Metropolitan &amp; Mojave Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors &amp; Kern County Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al. (CESA/CEQA)</i></p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)</i></p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p>	<ul style="list-style-type: none"> <li>• All 8 cases ordered coordinated in Sacramento County Superior Court</li> <li>• Stay on discovery issued until coordination trial judge orders otherwise</li> <li>• All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases</li> <li>• SWC and Metropolitan have submitted Public Records Act requests seeking administrative record materials and other relevant information</li> <li>• Answers filed in the three cases filed by State Water Contractors, including Metropolitan's</li> <li>• Draft administrative records produced on Sept. 16, 2021</li> <li>• Certified administrative records due early March 2022</li> </ul>



<p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA)</p>	
<p><b>CDWR Environmental Impact Cases</b>  <b>Sacramento Superior Ct. Case No. JCCP 4942,</b>  <b>3d DCA Case No. C091771</b>  <b>(20 Coordinated Cases)</b></p> <p>Validation Action  <i>DWR v. All Persons Interested</i></p> <p>CEQA          17 cases</p> <p>CESA/Incidental Take Permit          2 cases</p>	<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>• Parties have appealed attorneys’ fees and costs rulings</li> <li>• <u>Appeals fully briefed</u></li> </ul>
<p><b>COA Addendum/          No-Harm Agreement</b></p> <p><i>North Coast Rivers Alliance v. DWR</i>          Sacramento County Superior Ct.          (Judge Gevercer)</p>	<ul style="list-style-type: none"> <li>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</li> <li>• USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019</li> <li>• Westlands Water District and North Delta Water Agency granted leave to intervene</li> <li>• Metropolitan &amp; SWC monitoring</li> <li>• Deadline to prepare administrative record extended to Nov. 16, 2021</li> </ul>
<p><b>Delta Plan Amendments and Program EIR</b>          4 Consolidated Cases Sacramento County Superior Ct. (Judge Gevercer )</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> (lead case)</p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>Friends of the River, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> <li>• Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure to further the coequal goals</li> <li>• Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies</li> <li>• Cases consolidated for pre-trial and trial under <i>North Coast Rivers Alliance v. Delta Stewardship Council</i></li> <li>• SWC granted leave to intervene</li> <li>• Metropolitan supports SWC</li> </ul>



<p><b>Delta Stewardship Council Cases</b>          3 Remaining Cases (CEQA claims challenging original 2013 Delta Plan EIR) (Judge Chang)</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> <li>• 2013 and 2018 cases to be heard separately due to preemptory challenge</li> <li>• SWC and several individual members, including Metropolitan, SLDMWA and Westlands have dismissed their remaining 2013 CEQA claims but remain intervenor-defendants in the three remaining <i>Delta Stewardship Council Cases</i></li> </ul> <p><b>2013 Cases</b></p> <ul style="list-style-type: none"> <li>• Hearing on merits of CEQA claims in the three remaining 2013 cases re-set for Nov. 5, 2021</li> </ul> <p><b>2018 Cases</b></p> <ul style="list-style-type: none"> <li>• July 15, 2021 - Opening Briefs</li> <li>• Oct. 13, 2021 - Opposition Briefs</li> <li>• Nov. 22, 2021 - Reply Briefs</li> <li>• Dec. 10, 2021 - Case Management Conference to set hearing on the merits</li> </ul>
<p><b>SWP Contract Extension Validation Action</b>          Sacramento County Superior Ct.          (Judge Culhane)</p> <p><i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> <li>• DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful</li> <li>• Metropolitan and 7 other SWCs filed answers in support of validity to become parties</li> <li>• Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses</li> <li>• Case deemed related to the two CEQA cases below and assigned to Judge Culhane</li> <li>• DWR certified the administrative record for the validation action on May 3, 2021</li> <li>• Parties stipulated to a revised briefing schedule in all three related cases (validation and CEQA):</li> <li>• Opening Briefs Sept. 17, 2021</li> <li>• Opposition Briefs Nov. 15, 2021</li> <li>• Reply Briefs Dec. 17, 2021</li> <li>• Jan. 5, 2022 Hearing on the merits with CEQA cases, below</li> </ul>
<p><b>SWP Contract Extension CEQA Cases</b>          Sacramento County Superior Ct.          (Judge Culhane)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i></p> <p><i>Planning &amp; Conservation League, et al. v. DWR</i></p>	<ul style="list-style-type: none"> <li>• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 &amp; 10, 2019</li> <li>• Deemed related to DWR’s Contract Extension Validation Action and assigned to Judge Culhane</li> <li>• Administrative Record completed</li> </ul>





	<ul style="list-style-type: none"> <li>• DWR filed its answers on September 28, 2020</li> <li>• Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases</li> <li>• Briefing and hearing on the merits same as for the SWP Contract Extension Validation Action, above</li> </ul>
<p><b>Delta Conveyance Project Soil Exploration Case</b></p> <p><i>Central Delta Water Agency, et al. v. DWR</i>          Sacramento County Superior Ct.          (Judge Chang)</p>	<ul style="list-style-type: none"> <li>• Filed August 10, 2020</li> <li>• Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta</li> <li>• One cause of action alleging that DWR's adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) for soil explorations needed for the Delta Conveyance Project violates CEQA</li> <li>• March 24, 2021 Second Amended Petition filed to add allegation that DWR's addendum re changes in locations and depths of certain borings violates CEQA</li> <li>• Deadline to prepare the administrative record extended to Nov. 8, 2021</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 Earl)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i>          Sacramento County Super. Ct.          (Judge Earl)</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>• Deadline to prepare the administrative record extended to Sept. 27, 2021 in <i>CWIN v. DWR</i> case and <b>Nov. 30, 2021</b> in <i>NCRA v. DWR</i> case</li> <li>• <i>CWIN</i> case reassigned to Judge Earl so both cases will be heard together</li> <li>• Trial set for Jan. 14, 2022</li> </ul>



<b>San Diego County Water Authority v. Metropolitan, et al.</b>		
<b>Cases</b>	<b>Date</b>	<b>Status</b>
2010, 2012	Aug. 13-14, 2020	Final judgment and writ issued. Transmitted to the Board on August 17.
	Aug. 28, Sept. 1	SDCWA and Metropolitan filed memoranda of costs.
	Sept. 11	Metropolitan filed notice of appeal of judgment and writ.
	Sept. 14, 16	Metropolitan filed motion to strike SDCWA's costs memorandum, and SDCWA filed motion to strike or tax Metropolitan's costs memorandum.
	Jan. 13, 2021	Court issued order finding SDCWA is the prevailing party on the Exchange Agreement, entitled to attorneys' fees and costs under the contract.
	Feb. 4	Metropolitan filed opening appellate brief regarding final judgment and writ.
	Feb. 10	Court issued order awarding SDCWA statutory costs, granting SDCWA's and denying Metropolitan's related motions.
	Feb. 16	Per SDCWA's request, Metropolitan paid contract damages in 2010-2012 cases judgment and interest. Metropolitan made same payment in Feb. 2019, which SDCWA rejected.
	Feb. 25	Metropolitan filed notice of appeal of Jan. 13 (prevailing party on Exchange Agreement) and Feb. 10 (statutory costs) orders.
	Aug. 5	Metropolitan filed opening appellate brief regarding prevailing party on the Exchange Agreement and statutory costs.
	Sept. 21	Court of Appeal issued opinion on Metropolitan's appeal regarding final judgment and writ, holding: (1) the court's 2017 decision invalidating allocation of Water Stewardship Rate costs to transportation in the Exchange Agreement price and wheeling rate applied not only to 2011-2014, but also 2015 forward; (2) no relief is required to cure the judgment's omission of the court's 2017 decision that allocation of State Water Project costs to transportation is lawful; and (3) the writ is proper and applies to 2015 forward.
	<u>Sept. 21</u>	<u>SDCWA filed responding appellate brief regarding prevailing party on the Exchange Agreement and statutory costs.</u>
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.



Cases	Date	Status
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.
	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the demurrers and motions to strike.
	Feb. 16, 2021	Court issued order denying Metropolitan’s demurrers and motions to strike, allowing SDCWA to retain contested allegations in amended petitions/complaints.
	March 22	Metropolitan filed answers to the amended petitions/complaints and cross-complaints against SDCWA for declaratory relief and reformation, in the 2014, 2016 cases.
	March 22-23	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the amended petitions/complaints in the 2014, 2016 cases.
	April 23	SDCWA filed answers to Metropolitan’s cross-complaints.
	Sept. 30	Based on the Court of Appeal’s Sept. 21 opinion (described above), and the Board’s Sept. 28 authorization, Metropolitan paid \$35,871,153.70 to SDCWA for 2015-2017 Water Stewardship Rate charges under the Exchange Agreement and statutory interest.
2017	July 23, 2020	Dismissal without prejudice entered.
2018	July 28	Parties filed a stipulation and application to designate the case complex and related to the 2010-2017 cases, and to assign the case to Judge Massullo’s court.
	Nov. 13	Court ordered case complex and assigned to Judge Massullo’s court.
	April 21	SDCWA filed second amended petition/complaint.
	May 25	Metropolitan filed motion to strike portions of the second amended petition/complaint.



Cases	Date	Status
2018 (cont.)	May 25-26	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the motion to strike.
	July 19	Court issued order denying Metropolitan’s motion to strike portions of the second amended petition/complaint.
	July 29	Metropolitan filed answer to the second amended petition/complaint and cross-complaint against SDCWA for declaratory relief and reformation.
	July 29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the second amended petition/complaint.
	Aug. 31	SDCWA filed answer to Metropolitan’s cross-complaint.
2014, 2016, 2018	June 11	Metropolitan lodged administrative records.
	June 11, 21	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.
	<u>Oct. 27</u>	<u>Parties submitted to the court a joint stipulation and proposed order staying discovery through Dec. 8 and resetting pre-trial deadlines.</u>
	Jan. 12, 2022	Next Case Management Conference. (Sept. 17 Conference postponed.)
All Cases	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.



Cases	Date	Status
	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
Andrade Gonzalez LLP	MWD v. DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	\$250,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	\$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	\$1,214,517
	MWD v. Collins	185892	06/20	\$60,000
	<u>Delta Conveyance Project Bond Validation-CEQA Litigation</u>	<u>185899</u>	<u>09/21</u>	<u>\$100,000</u>
	MWD Drone and Airspace Issues	193452	08/20	\$50,000
	Equal Employee Opportunity Commission Charge	200462	03/21	\$20,000
	Public Employment Relations Board Charge No. LA-CE-1441-M	200467	03/21	\$30,000
	Representation re the Shaw Law Group's Investigations	200485	05/20/21	\$50,000
	DFEH Charge [REDACTED] (DFEH Number 202102-12621316)	201882	07/01/21	\$25,000
	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
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	\$185,000
	Iron Mountain SMARA (Surface Mining and Reclamation Act)	158043	07/17	\$250,000
	Bay-Delta Conservation Plan/Delta Conveyance Project (with SWCs)	170697	08/17	\$500,000
	Environmental Compliance Issues	185888	05/20	\$50,000



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
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	\$50,000
	General Real Estate Matters	180209	08/19	\$100,000
Law Office of Alexis S.M. Chiu*	<del>Bond Counsel</del>	<del>174595</del>	<del>07/18</del>	<del>N/A</del>
	Bond Counsel	200468	07/21	N/A
Cislo & Thomas LLP	Intellectual Property	170703	08/17	\$75,000
Curls Bartling P.C.*	Bond Counsel	174596	07/18	N/A
	Bond Counsel	200470	07/21	N/A
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	\$615,422
Duncan, Weinberg, Genzer & Pembroke PC	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
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	\$50,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	\$1,100,000
	Finance Advice	158024	12/16	\$100,000
	Deferred Compensation/HR	170706	10/17	\$ 400,000
	Food and Water Watch v. MWD	174612	09/18	\$200,000
	Tax Issues	180200	04/19	\$50,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
<u>Hausman &amp; Sosa, LLP</u>	<u>MOU Hearing Officer Appeal.</u>	<u>201892</u>	<u>09/21</u>	<u>\$25,000</u>
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
Horvitz & Levy	SDCWA v. MWD	124100	02/12	\$900,000
	General Appellate Advice	146616	12/15	\$100,000
	Food and Water Watch v. MWD Appeal	185862	09/19	\$60,000
Hunt Ortmann Palfy Nieves Darling & Mah, Inc.	Construction Contracts/COVID-19 Emergency	185883	03/20	\$40,000
Internet Law Center	HR Matter	174603	05/18	\$60,000
	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	\$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	\$40,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance (OFCCP)	137992	02/14	\$45,000
Jones Hall, A Professional Law Corporation*	Bond Counsel	200465	07/21	N/A
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	\$100,000
Lesnick Prince & Pappas LLP	Topock/PG&E's Bankruptcy	185859	10/19	\$30,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$201,444
	EEO Investigations	180193	01/19	\$100,000
	FLSA Audit	180199	02/19	\$50,000
LiMandri & Jonna LLP	Bacon Island Subrogation	200457	03/21	\$50,000





Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Manatt, Phelps & Phillips	In Re Tronox Incorporated	103827	08/09	\$540,000
	SDCWA v. MWD rate litigation	146627	06/16	\$2,900,000
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	\$2,300,000
	IID v. MWD	185900	08/20	\$ 410,000
	IID v. MWD (Contract Litigation)	193472	02/21	\$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	\$300,000
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A
Olson Remcho LLP	Government Law	131968	07/14	\$200,000
	Ethics Office	170714	01/18	\$350,000
Quinn Emanuel Urquhart & Sullivan	Appellate	174598	04/18	\$100,000
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	\$250,000
Stradling Yocca Carlson & Rauth*	<del>Bond Counsel</del>	<del>174599</del>	<del>07/18</del>	<del>N/A</del>
	Bond Counsel	200471	07/21	N/A
Theodora Oringer PC	OHL USA, Inc. v. MWD	185854	09/19	\$1,100,000
	Construction Contracts - General Conditions Update	185896	07/20	\$50,000
Thomas Law Group	MWD v. DWR, CDFW, CDNR – Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185891	05/20	\$250,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Thompson Coburn LLP	FERC Representation re Colorado River Aqueduct Electrical Transmission System	122465	12/11	\$100,000
	NERC Energy Reliability Standards	193451	08/20	\$25,000
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
Western Water and Energy	California Independent System Operator Related Matters	193463	11/20/20	\$100,000

\*Expenditures paid by Bond Proceeds/Finance

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**September 14, 2021**

Chair Dick called the teleconference meeting to order at 9:01 a.m.

Members present: Chair Dick, Directors Atwater, Camacho, Fellow, Goldberg, Murray, Phan, Record, Smith, and Tamaribuchi.

Members absent: Director Kassakhian.

Other Directors present: Chairwoman Gray, Directors Abdo, Ackerman, Blois, Butkiewicz, Cordero, De Jesus, Dennstedt, Erdman, Faessel, Hogan, Jung, Kurtz, Lefevre, Luna, McCoy, Morris, Ortega, Ramos, and Repenning.

Committee Staff present: Beatty, Hagekhalil, Miyashiro, Scully, Torres, and Upadhyay.

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

None

**2. MANAGEMENT REPORT**

a. Subject: General Counsel's report of monthly activities

General Counsel referred the committee to her monthly report.

**CONSENT CALENDAR OTHER ITEMS – ACTION**

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

A. Approval of the Minutes of the Adjourned Meeting of the Legal and Claims Committee meeting held August 17, 2021.

#### 4. CONSENT CALENDAR ITEMS – ACTION

**7-7**            Subject            Authorize an increase in the maximum amount payable under contract with Ryan & Associates for legal services related to general real estate and leasing law issues by \$100,000 to a maximum amount payable of \$200,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Presented by:      No presentation was given

The following Directors provided comments or asked questions:

1. Ortega

Chair Dick announced a reordering of the agenda items. The closed session items would be taken together, 7-8, 7-9 and 7a.

**7-8**            Subject            Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; and authorize increase of maximum amount payable under contract with Theodora Oringer PC for legal services by \$200,000 to an amount not to exceed \$1,100,000 (Approp. 154170); 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)]**

Presented by:      Senior Deputy General Counsel Mark Parsons

Senior Deputy General Counsel Mark Parsons gave a report on this item. The vote was taken in open session.

After completion of the presentations, Director Record made a motion, seconded by Director Atwater, to approve the consent calendar consisting of Items 3A, 7-7 and 7-8:

The vote was:

Ayes:                Directors Atwater, Camacho, Dick, Fellow, Goldberg, Murray, Phan, Record, Smith, and Tamaribuchi  
Noes:                None  
Recusal:            None  
Abstain:            None  
Absent:             Kassakhian

The motion for Items 3A, 7-7 and 7-8 passed by a vote of 10 ayes, 0 noes, 0 abstain, and 1 absent.

- 7-9**            Subject            Update and authorize the settlement of: (1) Imperial Irrigation District v. The Metropolitan Water District of Southern California, et al., Los Angeles Superior Court Case No. 19STCP01376 and California Court of Appeal Case No. B311674; and (2) Imperial Irrigation District v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 0STCV46404; the General Manager has determined 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)]**

Presented by:        Senior Deputy General Counsel Michael Hughes

In closed session, Senior Deputy General Counsel Michael Hughes gave a report on this item. The vote was taken in closed session.

Chair Dick reported that the Committee voted to recommend approval of the proposed settlement.

#### **END OF CONSENT CALENDAR ITEMS**

### **7. COMMITTEE ITEMS**

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

Presented by:        Assistant General Counsel Heather Beatty

Directors Butkiewicz, Goldberg, Hogan, and Smith, representing the San Diego County Water Authority, withdrew from the meeting for the report on this item.

Director Phan recused herself for the report on this item.

**5. OTHER BOARD ITEMS – ACTION**

None

**6. BOARD INFORMATION ITEMS**

None

**8. FOLLOW-UP ITEMS**

None

**9. FUTURE AGENDA ITEMS**

None

Next meeting will be held on October 12, 2021.

Meeting adjourned at 10:48 a.m.

Larry Dick  
Chair