

# 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  
M. Ramos  
K. Seckel

## **Legal and Claims Committee**

Meeting with Board of Directors \*

**June 10, 2024**

**11:30 a.m.**

**Monday, June 10, 2024  
Meeting Schedule**

**09:00 a.m. LEG  
11:00 a.m. Break  
11:30 a.m. Legal  
01:30 p.m. EOT  
03:30 p.m. OWS**

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. (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: 862 4397 5848. Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 815 2066 4276 or click <https://us06web.zoom.us/j/81520664276pwd=a1RTQWh6V3h3ckFhNmdsUWpKR1c2Zz09>

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

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

1. **Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))**
2. **MANAGEMENT ANNOUNCEMENTS AND HIGHLIGHTS**
  - A. General Counsel's report of monthly activities [21-3436](#)

**Attachments:** [06112024 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 May 13, 2024 (Copies have been submitted to each Director, any additions, corrections, or omissions) [21-3437](#)

**Attachments:** [06102024 LC 3A \(05132024\) Minutes](#)

### 4. CONSENT CALENDAR ITEMS - ACTION

NONE

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

### 5. OTHER BOARD ITEMS - ACTION

- 8-4 Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014, 2016, and 2018 actions; and the appeals of the 2014, 2016, and 2018 actions, Court of Appeal for the First Appellate District Case No. A170156; authorize initiation of settlement negotiations with SDCWA and provide direction to staff regarding 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 Section 54956.9(d)(1)] [21-3438](#)

### 6. BOARD INFORMATION ITEMS

NONE

### 7. COMMITTEE ITEMS

- a. Update on the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Phase 1 , State Water Board Cases, Sacramento County Superior Court Case No. JCCP 5013, and Phase 2 [21-3440](#)

**Attachments:** [06102024 LC 7a Presentation](#)

- b. Update on environmental litigation challenging the Department of Water Resources Delta Conveyance Project approval, certification of the Final Environmental Impact Report and other actions taken under the California Environmental Quality Act, currently ten related cases pending in Sacramento County Superior Court: Tulare Lake Basin Water Storage District v. California Department of Water Resources, Case No. 24WM000006, Sierra Club, et al. v. California Department of Water Resources, Case No. 24WM000008, City of Stockton v. California Department of Water Resources, Case No. 24WM000009, County of San Joaquin et al. v. California Department of Water Resources, Case No. 24WM000010, County of Butte v. California Department of Water Resources, Case No. 24WM000011, Sacramento Area Sewer District v. California Department of Water Resources, Case No. 24WM000012, County of Sacramento, et al. v. California Department of Water Resources, Case No. 24WM000014, San Francisco Baykeeper, et al. v. California Department of Water Resources, Case No. 24WM000017, South Delta Water Agency and Rudy Mussi Investment L.P. v. California Department of Water Resources, Case No. 24WM000062 and North Delta Water Agency v. Cal. Dept. of Water Resources, Case No. 24WM000076. [Conference with legal counsel – anticipated litigation (ten or more cases); to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(4)] [21-3439](#)

**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.



## Matters Impacting Metropolitan

### ***Friends of the River, et al. v. Sites Project Authority, et al.*** **(Yolo County Superior Court)**

On May 31, 2024, Judge Samuel T. McAdam of the Yolo County Superior Court issued a ruling on the merits upholding the Final Environmental Impact Report for the Sites Reservoir Project and denying the plaintiffs’ petition for a writ of mandate based on multiple alleged violations of the California Environmental Quality Act (CEQA). The case was filed in December 2023 by six environmental organizations, Friends of the River,

Center for Biological Diversity, California Sportfishing Protection Alliance, California Water Impact Network, Save California Salmon, and Sierra Club. It was litigated on an expedited basis under last year’s SB 149 budget trailer bill, which requires that for critical infrastructure projects certified by the governor as eligible, CEQA litigation through any appeal be completed within 270 days, if feasible. If appealed, which appears likely, the appeal will proceed on an expedited basis as well, with a final judgment on appeal issuing as early as September 2024.

## Other Matters

### **Miscellaneous**

On May 1, 2024, Metropolitan issued \$35,565,000 of Tax-Exempt Flexible Rate Revolving Notes, Series 2024 A-4. The Notes were issued to defease the outstanding Subordinate Water Revenue Refunding Bonds, 2017 Series B. Legal Department staff attorneys worked with and assisted outside bond counsel with the drafting and negotiation of several contracts and closing certificates.

On May 6, 2024, Metropolitan issued \$367,005,000 of Water Revenue Refunding

Bonds, 2024 Series A (Bonds). The Bonds were issued to refund and redeem all of Metropolitan’s \$271,815,000 outstanding principal amount of Special Variable Rate Water Revenue Refunding Bonds, 2020 Series B and \$155,565,000 of Metropolitan’s senior lien short-term notes evidencing draws made under its Short-Term Revolving Credit Facility. Legal Department staff attorneys worked with Finance, Engineering and Water Resources staff to prepare the official statement used to market the Bonds and assisted outside bond and disclosure counsel with the drafting and negotiation of several contracts and closing certificates.

## Matters Concluded and/or Terminated

### **Hearing Officer Appeal Matter - Grievance**

In this appeal, Local 1902 alleged that its member was entitled to backpay for missed COLA adjustments. MWD disputed the assertion and the matter proceeded through the grievance and hearing officer appeal process. Prior to the

hearing, the parties engaged in extensive negotiations and a resolution was reached where the impacted employee would receive \$4,006 in adjusted backpay, subject to applicable payroll withholding. In exchange, Local 1902 agreed to withdraw the appeal.



## Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party	1	Complaint for Damages for: (1) Breach of Contract; (2) Indebitatus Assumpsit; (3) Accounts Stated; (4) Payment on Bond; (5) Enforcement of Lien (Stop Notice), filed in Riverside County Superior Court, in the case <i>R&amp;J Sheet Metal, Inc. v. Pyramid Building &amp; Engineering, Inc.</i> , MWD, Case No. CVMW2403580, relating to Plaintiff R&J Sheet Metal providing labor and materials for the installation of cut and fabricated sheet-metal components for the Electrical Upgrade Phase 2 at the Mills Water Treatment Plant	
Government Code Claims	4	Claims described as follows: (1) black electrical tape flew off of MWD truck striking Claimant's vehicle; (2) business operations impacted when MWD vehicle blocked the Claimant's driveway; (3) motor vehicle accident involving an MWD vehicle; and (4) employment claim asserting retaliation, harassment, discrimination, failure to prevent harassment, discrimination and retaliation, defamation, battery, false imprisonment, negligent supervision, and intentional infliction of emotional distress	
Requests Pursuant to the Public Records Act	12	<u>Requestor</u>	<u>Documents Requested</u>
		Brayton Purcell, LLP	Insurance coverage information for the contractors, including F. E Young Construction and Scott Co., who constructed the Diemer Filtration Plant that was completed in 1964
		Capitol City Research	All expenses incurred by Director Juan Garza since he became a member of the MWD Board
		Evergreen Solutions	Current list of job titles and compensation range for each job title
		Langan	As-built drawings for any MWD pipelines along West Cienega Avenue in the city of San Dimas
		Mazel Equities National Associates	List of unclaimed or outstanding checks and unclaimed bonds
		PCL Construction	Proposals submitted in response to Request for Qualifications for Progressive Design-Build Services for Sepulveda Feeder Pump Stations Project
		Private Citizen	Salary schedules effective as of June 2018, June 2019, June 2020, June 2021, and June 2022
		Pro Engineering Consulting,	Information on water pressure at a property in the city of Brea

Date of Report: June 5, 2024



<u>Requestor</u>	<u>Documents Requested</u>
Sierra Club	Population forecasts used for the 2020 IRP Regional Needs Assessment
SmartProcure	Purchase order data including purchase order number, purchase order date, line item details, line item quantity, line item price, vendor information from 02/09/2024 to current
Stetson Engineers (2 requests)	(1) Watershed Sanitary Surveys for the Colorado River Watershed and State Water Project; and (2) 2002 Source Water Assessment



PLEASE NOTE

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



<b>Bay-Delta and SWP Litigation</b>	
<b>Subject</b>	<b>Status</b>
<p><b>Delta Conveyance Project CEQA Cases</b></p> <p><i>City of Stockton v. California Department of Water Resources</i></p> <p><i>County of Butte v. California Department of Water Resources</i></p> <p><i>County of Sacramento v. California Department of Water Resources</i></p> <p><i>County of San Joaquin et al. v. California Department of Water Resources</i></p> <p><i>Sacramento Area Sewer District v. California Department of Water Resources</i></p> <p><i>San Francisco Baykeeper, et al. v. California Department of Water Resources</i></p> <p><i>Sierra Club, et al. v. California Department of Water Resources</i></p> <p><i>South Delta Water Agency and Rudy Mussi Investment L.P. v. California Department of Water Resources</i></p> <p><i>Tulare Lake Basin Water Storage District v. California Department of Water Resources</i></p> <p>Sacramento County Superior Ct. (Judge Acquisto)</p>	<ul style="list-style-type: none"> <li>• DWR is the only named respondent/defendant</li> <li>• All alleged CEQA violations</li> <li>• Most allege violations of the Delta Reform Act, Public Trust Doctrine and Delta and Watershed Protection Acts</li> <li>• Two allege violations of the fully protected bird statute</li> <li>• One alleges violations of Proposition 9 (1982) and the Central Valley Project Act</li> <li>• Second case management conference and hearing on motion for preliminary injunction re geotechnical work <u>held set for</u> May 31, 2024</li> <li>• Deadline for DWR to prepare the administrative record extended to <del>June</del> <u>14 Sept. 30</u>, 2024</li> <li>• <u>Next case management conference Oct. 18, 2024</u></li> <li>• <u>Ruling on motions for preliminary injunction re geotechnical work TBD</u></li> </ul>
<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 <del>TBD</del> <u>Whalen</u>)</p>	<ul style="list-style-type: none"> <li>• <u>Complaint filed April 16, 2024, alleges that the State Water Board must rule on DWR's 2009 petition to extend the time to perfect its State Water Project rights before the State Water Board may begin to adjudicate DWR's petition to change its water rights to add new points of diversion for the Delta Conveyance Project</u></li> <li>• <u>July 17, 2024 hearing date for State Water Resources Control Board demurrer (motion to dismiss)</u></li> </ul>





Subject	Status
<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>• <del>Motion to dismiss cross appeals denied without prejudice to renewing the motion in merits briefing May 1, 2024 deadline to file oppositions to motion to dismiss cross appeals</del></li> <li>• <u>Parties meeting and conferring on briefing schedule</u></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.</i> (PCFFA)</p> <p><i>Calif. Natural Resources Agency, et al. v. Raimondo, et al.</i> (CNRA)</p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Thurston)</p>	<ul style="list-style-type: none"> <li>• SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases</li> <li>• Federal defendants reinitiated consultation on Oct 1, 2021</li> <li>• March 28, 2024 order extending the Interim Operations Plan and the stay of the cases through the issuance of a new Record of Decision or December 20, 2024, whichever is first</li> </ul>
<p><b>CESA Incidental Take Permit Cases</b></p> <p><b>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</b></p> <p><i>Metropolitan &amp; Mojave Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al.</i> (CESA/CEQA/Breach of Contract)</p> <p><i>State Water Contractors &amp; Kern County Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al.</i> (CESA/CEQA)</p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources</i> (CEQA)</p>	<ul style="list-style-type: none"> <li>• Administrative records certified in October 2023</li> <li>• Parties are conferring on <u>stipulation to delay setting a merits briefing schedule by 90 days and extending the time to bring the action to trial by six months</u></li> </ul>



Subject	Status
<p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA/ Breach of Contract/Takings)</p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <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. C100302</b> <b>(20 Coordinated Cases)</b></p> <p>Validation Action <i>DWR v. All Persons Interested</i></p> <p>CEQA 17 cases</p> <p>CESA/Incidental Take Permit 2 cases</p> <p>(Judge Arguelles)</p>	<ul style="list-style-type: none"> <li>• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit</li> <li>• January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety</li> <li>• May 11, 2022, court of appeal reversed the trial court’s denial of attorney fees and costs</li> <li>• Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal’s opinion</li> <li>• Dec. 26, 2023 order denying fee motions</li> <li>• Six notices of appeal filed</li> </ul>
<p><b>COA Addendum/ No-Harm Agreement</b></p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Rockwell)</p>	<ul style="list-style-type: none"> <li>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</li> <li>• Westlands Water District and North Delta Water Agency granted leave to intervene</li> <li>• Metropolitan &amp; SWC monitoring</li> <li>• Deadline to prepare administrative record last extended to Nov. 18, 2022</li> </ul>
<p><b>Water Management Tools Contract Amendment</b></p> <p><i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Aquisto)</p>	<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,</li> </ul>



Subject	Status
<i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Aquisto)	Public Trust Doctrine and seeking declaratory relief <ul style="list-style-type: none"><li>• SWC motion to intervene in both cases granted</li><li>• Dec. 20, 2022 DWR filed notice of certification of the administrative record and filed answers in both cases</li></ul>



<b><i>San Diego County Water Authority v. Metropolitan, et al.</i></b>		
<b>Cases</b>	<b>Date</b>	<b>Status</b>
<b>2014, 2016</b>	Sept. 30	Based on the Court of Appeal’s Sept. 21 opinion (described above), and the Board’s Sept. 28 authorization, Metropolitan paid \$35,871,153.70 to SDCWA for 2015-2017 Water Stewardship Rate charges under the Exchange Agreement and statutory interest.
<b>2017</b>	July 23, 2020	Dismissal without prejudice entered.
<b>2018</b>	April 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
	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
	<u>May 3</u>	<u>Participating member agencies filed notice of appeal</u>
	July 18	Hearing on prevailing party
<b>All Cases</b>	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.
	April 27	SDCWA served notice of deposition of non-party witness.
	May 13-14	Metropolitan filed motions to quash and for protective order regarding deposition of non-party witness.
	June 4	Ruling on motions to quash and for protective order.



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Albright, Yee & Schmit, APC	Employment Matter	211923	05/23	\$60,000
Andrade Gonzalez LLP	MWD v. DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	\$250,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	\$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	\$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	\$100,000
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	\$75,000
	Pure Water Southern California	207966	11/22	\$100,000
	Progressive Design Build	216053	04/24	\$250,000
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	\$50,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Burke, Williams & Sorensen, LLP	Real Property – General	180192	01/19	\$100,000
	Labor and Employment Matters	180207	04/19	\$75,000
	General Real Estate Matters	180209	08/19	\$200,000
	Rancho Cucamonga Condemnation Actions (Grade Separation Project)	207970	05/22	\$100,000
Law Office of Alexis S.M. Chiu*	Bond Counsel	200468	07/21	N/A
<u>Castañeda + Heidelman LLP</u>	<u>Employment Matter</u>	<u>216055</u>	<u>04/24</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
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	\$615,422
Duncan, Weinberg, Genzer & Pembroke	Power Issues	6255	09/95	\$3,175,000
Ellison, Schneider, Harris & Donlan	Colorado River Issues	69374	09/05	\$175,000
	Issues re SWRCB	84457	06/07	\$200,000
Erin Joyce Law, PC	Employment Matter	216039	11/23	\$100,000
Greines, Martin, Stein & Richland LLP	SDCWA v. MWD	207958	10/22	\$100,000
	Colorado River Matters	207965	11/22	\$100,000
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	\$50,000
Hanna, Brophy, MacLean, McAleer & Jensen, LLP	Workers' Compensation	211926	06/23	\$200,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	\$1,100,000





Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
	Finance Advice	158024	12/16	\$100,000
	Deferred Compensation/HR	170706	10/17	\$500,000
	Tax Issues	180200	04/19	\$50,000
	Alternative Project Delivery (ADP)	207961	10/22	\$250,000
	Ad Valorem Property Taxes	216042	11/23	\$100,000
<u>Hausman &amp; Sosa, LLP</u>	<u>Jones v. MWD</u>	<u>216056</u>	<u>05/24</u>	<u>\$100,000</u>
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
Hemming Morse, LLP	Baker Electric v. MWD	211933	08/23	\$100,000
Horvitz & Levy	SDCWA v. MWD	124100	02/12	\$1,250,000
	General Appellate Advice	146616	12/15	\$200,000
	Colorado River	203464	04/22	\$100,000
	Delta Conveyance Bond Validation Appeal	216047	03/24	\$25,000
	PFAS Multi-District Litigation – Appeal	216050	03/24	\$200,000
Innovative Legal Services, P.C.	Employment Matter	211915	01/19/23	\$125,000
Internet Law Center	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	\$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	\$100,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance	137992	02/14	\$45,000
Jones Hall, A Professional Law Corp*	Bond Counsel	200465	07/21	N/A
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$250,000

Date of Report: June 5, 2024



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Kutak Rock LLP	Delta Islands Land Management	207959	10/22	\$10,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	<del>\$240,821</del> <del>\$229,724</del>
	FLSA Audit	180199	02/19	\$50,000
	EEO Advice	216041	12/23	\$100,000
Lieff Cabraser Heimann & Bernstein, LLP	PFAS Multi-District Litigation	216048	03/24	\$100,000
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	<del>\$550,000</del> <del>\$400,000</del>
Meyers Nave Riback Silver & Wilson	Pure Water Southern California	207967	11/22	\$100,000
	<del>PFAS Compliance Issues</del>	<del>207968</del>	<del>11/14/22</del>	<del>\$100,000</del>
Miller Barondess, LLP	SDCWA v. MWD	138006	12/14	\$600,000
Morgan, Lewis & Bockius	SDCWA v. MWD	110226	07/10	\$8,750,000
	Project Labor Agreements	200476	04/21	\$100,000
Musick, Peeler & Garrett LLP	Colorado River Aqueduct Electric Cables Repair/Contractor Claims	193461	11/20	\$2,500,000
	Arvin-Edison v. Dow Chemical	203452	01/22	\$100,000
	Semitropic TCP Litigation	207954	09/22	\$75,000
Nixon Peabody LLP*	Bond Counsel [re-opened]	193473	07/21	\$100,000
	Special Finance Project	207960	10/22	\$50,000
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A



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



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

\*Expenditures paid by Bond Proceeds/Finance

\*\*Expenditures paid by another group

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**MINUTES**

**LEGAL AND CLAIMS COMMITTEE**

**May 13, 2024**

Chair Luna called the meeting to order at 1:19 p.m.

Director Garza indicated he is participating under AB 2449 “just cause” due to a contagious illness. Director Garza appeared by audio and on camera, and stated he was alone in the room.

Members present: Directors Camacho, Cordero, Dick, Garza (AB 2449), Kurtz, Luna, McCoy, Miller, Peterson, Ramos (entered after roll call, teleconference posted location), and Seckel.

Members absent: Director Douglas.

Other Directors present: Directors Abdo, Ackerman, Armstrong, Bryant, Dennstedt, Erdman, Faessel, Fellow, Goldberg, Lefevre (teleconference posted location), Morris, Ortega, and Pressman (teleconference posted location).

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

**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 reported on continuing cases related to copper pitting, and Metropolitan’s request for the publication of a new related appellant case so it can be cited for any related filings.

Chair Ortega thanked the General Counsel and staff for providing a brief on the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative.

Directors Ramos entered the meeting.

**CONSENT CALENDAR ITEMS – ACTION**

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

- A.** Subject: Approval of the Minutes of the Legal and Claims Committee for April 9, 2024.

**4. CONSENT CALENDAR ITEMS – ACTION**

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

No presentation was given, Director Peterson made a motion, seconded by Director McCoy, to approve items 3A, and 7-6.

The vote was:

Ayes: Directors Cordero, Dick, Garza, Kurtz, Luna, McCoy, Miller, Peterson, Ramos, and Seckel.

Noes: None

Abstentions: None

Absent: Directors Camacho and Douglas.

The motion for Items 3A and 7-6 passed by a vote of 10 ayes, 0 noes, 0 abstention, and 2 absent.

Director Garza stated he was alone in the room

**END OF CONSENT CALENDAR ITEMS**

## 5. OTHER BOARD ITEMS – ACTION

Director Dick recused himself on Item 8-5 because he owns stock in Bayer, 3M, and Corteva companies and left the room.

Board Chair Ortega recused himself on Item 8-5 because Honeywell was a source of income and left the room.

Director Pressman recused himself on Item 8-5 because Grant & Eisenhofer is a business client and was placed in zoom waiting room.

Director Faessel stated that although he was not a member of the committee that he owns stock in Corteva and left the room.

Director Miller stated that he no longer owns stock in 3M company and was no longer conflicted on Item 8-5.

Chair Luna called the meeting into closed session.

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

Chair Luna reported there were no reportable actions taken in closed session.

In open session, Director Peterson made a motion, seconded by Director Cordero, to approve the contract increase.

The vote in open session was:

Ayes: Directors Cordero, Garza, Luna, McCoy, Miller, Peterson, Ramos, and Seckel

Noes: None

Abstentions: None

Not voting: Director Dick

Absent: Directors Camacho, Douglas, and Kurtz

The motion for Item 8-5 passed by a vote of 8 ayes, 0 noes, 0 abstentions, 1 recusal, and 3 absent.

Director Garza stated he was alone in the room.

## 6. BOARD INFORMATION ITEMS

None

## 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; 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 6 [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

Presented by: Heather Beatty, Assistant General Counsel

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

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



**8. FOLLOW-UP ITEMS**

None

**9. FUTURE AGENDA ITEMS**

None

Next meeting will be held on June 10, 2024.

Meeting adjourned at 2:58 p.m.

Miguel Luna  
Chair



## Legal and Claims Committee

Update on the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Phase 1, State Water Board Cases, Sacramento County Superior Court Case No. JCCP 5013, and Phase 2

Item 7a

June 10, 2024

## Item # 7a

### Introduction

#### Subject

Update on litigation challenging the 2018 Phase 1 update to the Bay-Delta Water Quality Control Plan

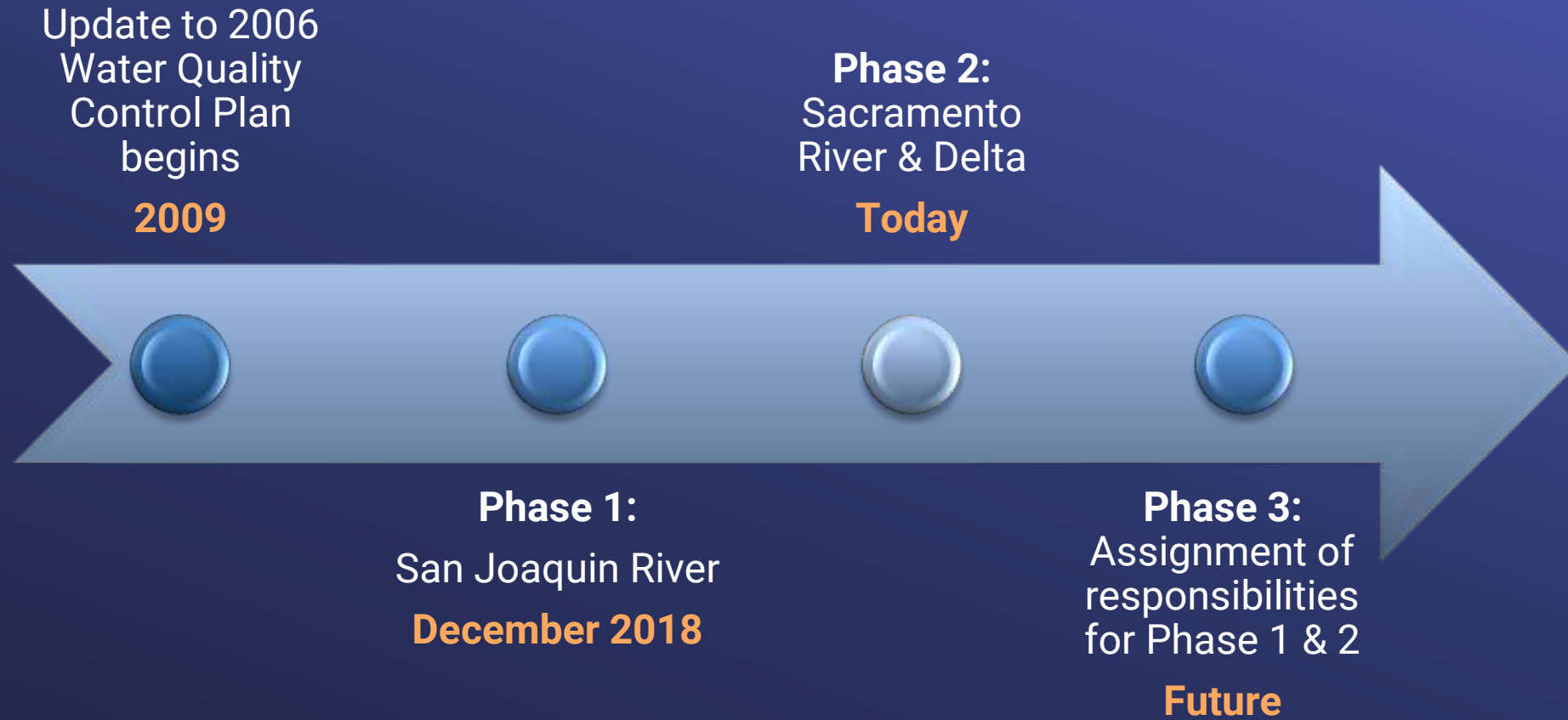
#### Purpose

Update on Metropolitan's intervention through the State Water Contractors to protect investment in SWP supplies and implications for future projects

#### Next Steps

Regular updates in GC reports and committee

# State Board update to the Water Quality Control Plan



## Background



## 2018 Update to WQCP (Phase1)

- Water Board revised WQCP to add new flow objective on Lower San Joaquin River and three of its tributaries, and amended salinity objectives in the southern Delta

## Phase 1 Legal Challenges

- Collectively, twelve petitioners had 116 claims
- Administrative record was over 770,000 pages
- Merits briefing totaled approx. 1500 pages
- There were 11 days of hearing

## Eleven Cases

## Water Board Defendant



- Westlands Water District
- Merced Irrigation District
- City of Modesto
- Modesto Irrigation District
- North Coast Rivers Alliance
- California Farm Bureau Federation
- United States of America
- San Francisco Bay Keeper
- Stockton East Water District
- South Delta Water Agency
- San Joaquin Tributaries Authority
- Intervenor - State Water Contractors

\* Only lead petitioner listed

## Causes of Action



- CEQA
- Public Trust Doctrine
- Porter-Cologne Act
- California Constitution, Art. 10, § 2 (Waste and Unreasonable Use)

## Summary of Legal Requirements

### CEQA

Requires consideration of environmental impacts and, where appropriate, adoption of mitigation

### Public Trust Doctrine

Requires protection of public trust resources whenever feasible and consideration of the public interest

### Porter Cologne Act

Requires balancing of all beneficial uses / reasonable protection

### California Constitution, Art. 10 Sec. 2

Prohibits waste and unreasonable use of water



## State Water Contractors' Intervention

Responded to Petitions Filed by NCRA, Bay Keeper and Delta Water Agencies

Why SWC responded to these petitions?

These Petitioners made allegations related to State Water Project

Example of statements regarding the State Water Project

“The SED...[obfuscates] the State Board’s duty to require the State Water Project and Central Valley Project to follow the law....”

“It is widely understood that the SWP and CVP are a primary cause of the deteriorating populations of Delta related species.”

## State Water Contractors' Intervention

# Arguments Focused on Southern Delta Salinity Objectives

## Revised Agricultural Salinity Standard

- South Delta salinity objective 1.0 dS/m (electrical conductivity) all year\*
- Applies standard to river-reaches rather than specific compliance points

## Basis for Revision

Expert report concluded:

“all of the models presented in this report predicted that the water quality standard could be increased to as high as 0.9 to 1.1 dS/m and all of the crops normally grown in the South Delta would be protected.”

\* Excluding Vernalis standard

Unimpaired  
Hydrograph and  
Salinity  
Standards  
Upheld



## Implications of Ruling on Pending WQCP Update, Phase 2 (Sacramento River and Delta watershed)

- Court showed deference to the State Water Board
- Court relied on general description and programmatic analysis for approval
- Anticipate further litigation as responsibility for implementation is determined and implementation detail provided

## Next Steps

### Phase1

- Several Petitioners have filed appeals.
- Implementation regulation and/or administrative hearing pending

### Phase2

- Summer/Fall 2024: Release of draft Sacramento/Delta updates to Bay-Delta Plan (including Program of Implementation language) for public review and comment and workshop
- First Quarter 2025: Release for public review Final Draft Staff Report
- Second Quarter 2025: Board meeting to consider adoption of Phase 2 updates to the WQCP and Final Staff Report

