

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

N. Sutley, Chair
J. Garza, Vice Chair
M. Camacho
G. Cordero
L. D. Dick
C. Kurtz
T. McCoy
C. Miller
G. Peterson
M. Ramos
H. Repenning
K. Seckel

Legal and Claims Committee - Final - Revised 1

Meeting with Board of Directors *

July 10, 2023

10:30 a.m.

Agendas, live streaming, meeting schedules, and other board materials are available here: <https://mwdh2o.legistar.com/Calendar.aspx>. A listen only phone line is available at 1-877-853-5257; enter meeting ID: 873 4767 0235. Members of the public may present their comments to the Board or a Committee on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference (833) 548-0276 and enter meeting ID: 876 9484 9772 or click <https://us06web.zoom.us/j/87694849772?pwd=V3dGZGRYUjJ3allqdUxXTIJRM044Zz09>

Monday, July 10, 2023 Meeting Schedule

08:30 a.m. EOT
10:30 a.m. LC
12:30 p.m. Break
01:00 p.m. LRAC
03:00 p.m. OWS

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

Teleconference Locations:

3008 W. 82nd Place • Inglewood, CA 90305

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

Meritage Resort • 875 Bordeaux Way • Napa, CA 94558

* 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

[21-2184](#)

Attachments: [07102023 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 9, 2023 and Minutes (Copies have been submitted to each Director, Any additions, corrections, or omissions) [21-2183](#)

Attachments: [07102023 LC 3A \(05092023\) minutes](#)

4. CONSENT CALENDAR ITEMS - ACTION

NONE

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

5. OTHER BOARD ITEMS - ACTION

- 8-2 Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call vote is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-2473](#)

Attachments: [07112023 LC 8-2 B-L](#)
[07112023 LC 8-2 Presentation \(Revised\)](#)

6. BOARD INFORMATION ITEMS

NONE

7. COMMITTEE ITEMS

- a. General Counsel's Business Plan for Fiscal Year 2023-2024. [21-2531](#)
[ADDED SUBJECT 7/3/2023]

Attachments: [07102023 LC 7a GC Business Plan 2023-2024](#)
[07102023 LC 7a Presentation](#)

- b. Discussion of Department Head Performance and Goal Setting [21-2474](#)
[Public employees' performance evaluations – General Counsel; to be heard in closed session pursuant to Gov. Code Section 54957]

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

County of Butte, et al. v. Department of Water Resources (Sacramento County Superior Court)

On June 23, 2023, the California Supreme Court denied Butte and Plumas Counties' petition for review of the Court of Appeal's decision in favor of the Department of Water Resources (DWR) in the above-entitled case. As previously reported, the Counties' lawsuit challenged the environmental impact report (EIR) issued by DWR in conjunction with relicensing of the Lake Oroville hydroelectric facilities (Oroville Facilities) by the Federal Energy Regulatory Commission (FERC) and asserted numerous claims under the California Environmental Quality Act (CEQA).

While this effectively concludes the state court litigation related to the relicensing process, the Counties will have an opportunity to challenge the FERC license once it is issued by filing a federal lawsuit directly in the Ninth Circuit or the DC Circuit. However, it is our assessment that the Counties are unlikely to be successful in either venue. This decision by the California Supreme Court therefore represents another significant step toward obtaining a new 50-year license for the Oroville Facilities. To that end, the State Water Contractors sent a letter to FERC on June 23, requesting that the license be issued without any further delay. (See General Counsel's April 2023 Activity Report.)

Reese v. Metropolitan (Riverside County Superior Court)

On June 26, 2023, the parties attended a mediation; however, the parties did not reach agreement. On June 30, the Riverside County Superior Court set a Trial Setting Conference for March 20, 2024. The parties are engaged in discovery.

As previously reported, on October 31, 2022, employee Darren Reese filed a lawsuit alleging six causes of action against Metropolitan under the California Fair Employment and Housing Act: race discrimination; race harassment; gender discrimination; gender harassment; retaliation; and failure to prevent harassment,

discrimination, and retaliation. Plaintiff alleges that he was harassed and discriminated against based on his race and gender, he was retaliated against because of his complaints, and Metropolitan failed to take reasonable steps to prevent these occurrences. The complaint was served on Metropolitan on November 14, 2022 and Metropolitan filed its answer on December 14, 2022.

Alejandro Martinez v. Metropolitan (California Department of Industrial Relations)

On January 17, 2023, Mr. Martinez, an employee, filed a retaliation complaint with the California Department of Industrial Relations (DIR), and Metropolitan was served with the complaint on February 1, 2023. The complaint alleges Metropolitan engaged in unlawful retaliation in response to a safety complaint. This matter was set for mediation before the DIR on June 28, 2023. Metropolitan filed a position statement explaining it has not engaged in any unlawful retaliation. On June 28, Mr. Martinez, his union representative from AFSCME Local 1902, and Metropolitan held a mediation session with a DIR mediator. The parties agreed to continue potential settlement discussions concerning Mr. Martinez's complaint.

Sierra Club v. Cal. Dept. of Water Resources (consolidated with Department of Water Resources v. All Persons Interested, etc.) (Sacramento County Superior Court)

A four-day trial on the merits was held from May 15 through May 18, 2023. The court did not take the matter under submission as Judge Mennemeier ordered supplemental briefing, first on two issues, then adding a third on June 8. Unless further briefing is ordered, supplemental briefing concluded on June 30. At the conclusion of trial, Judge Mennemeier indicated he may order further oral argument, or he may set a case management conference after reviewing the supplemental briefs to announce his ruling and discuss preparation of a formal statement of decision.



These two cases concern DWR’s adoption of bond resolutions authorizing issuance of revenue bonds to finance environmental review, planning, design, and, if a project is approved, construction of a new Delta conveyance facility. DWR filed a case seeking a judgment declaring the bonds to be valid, known as the validation action, and Sierra Club and others filed a case alleging various violations of CEQA. The cases were consolidated for all purposes.

Before trial, DWR succeeded in getting the CEQA claims and affirmative defenses

dismissed, as well as Delta Reform Act and public trust affirmative defenses.

Metropolitan and other supporting water contractors have worked closely with DWR throughout the case and joined in DWR’s merits briefs and evidentiary objections. Although Metropolitan has retained special counsel to assist, the Legal Department has performed most of the work representing Metropolitan to date.

Other Matters

Finance

On June 21, 2022, Metropolitan issued \$258,410,000 of Water Revenue and Refunding Bonds, 2023 Series A (Bonds). The Bonds were issued to fund the acquisition and construction of capital improvements to Metropolitan’s Water System; refund portions of a series of bonds originally issued in 2012; and prepay \$35,580,000 of outstanding Wells Fargo Short-Term Revolving Notes issued on June 13, 2023. During a 6-month process, 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.

On June 30, 2023, Metropolitan issued \$38,400,000 of Tax-Exempt Flexible Rate Revolving Note, Series 2023 A-2 and \$18,000,000 of Taxable Flexible Rate Revolving Note, Series 2023 A-3 (together the Notes). The Notes were issued to fund Board-approved debt-financed projects for the Antelope Valley East Kern (AVEK) High Desert Water Banking Program and conservation program. Legal Department staff attorneys worked with and assisted outside bond counsel with the drafting and negotiation of several contracts and closing certificates.

Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Action in which MWD is a party and Government Code Claim	1	Complaint for Damages and Government Code claim for: (1) Discrimination on the Basis of Race, Color, and/or National Origin; (2) Retaliation; (3) Failure to Prevent Discrimination; (4) Failure to Promote; and (5) Unfair Business Practice, filed in Los Angeles County Superior Court, in the case <i>Encarnacion Gutierrez v. MWD</i> , Case No. 23STCV11052	
Government Code Claims	1	Claim relating to an accident involving an MWD vehicle	
Requests Pursuant to the Public Records Act	13	<u>Requestor</u> California Water Research	<u>Documents Requested</u> Correspondence between Lynda Smith and Delta Lead Scientist Dr. Laurel Larsen from January 1, 2023 to June 5, 2023



<u>Requestor</u>	<u>Documents Requested</u>
Colorado State University Graduate Student	Energy use data for MWD's five pump stations along the Colorado River Aqueduct
Deltek	Contract documents and bid results for the Request for Qualifications for Tunnel Design Engineering Consulting Services
Fugro	Prequalified List for Request for Qualifications for Tunnel Design Engineering Consulting Services
GHD	Proposals submitted in response to Request for Proposal for Desalination Research
Hernandez, Kroone & Associates	List of entities that had the contracts for Land Surveying, Mapping and Aerial Mapping On-Call Service
Jacobs	Proposals submitted in response to Request for Proposal for Pure Water Southern California Program - Conveyance Reaches 1 & 2 Through the Cities of Carson, Long Beach and Lakewood Design Services
Lowe's Home Improvement	Rebate data for devices purchased from Lowe's Stores
Metrohm USA	Configuration and summary of the PT study and results submitted for the bid process for Ion Chromatograph (IC) System with Dual Channels and Autosampler with Variable Wavelength Detector
Quantum Dynamics	Summary of the water audits and costs for water utilities serviced by MWD
Santa Clarita Valley Water Agency	Copy of MWD's purchasing policy
Stanford University Graduate Student	Data and MWD's policy on rationing water deliveries to its member agencies during periods of drought
Voice of San Diego	Copy of Chair Adan Ortega's Form 700

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).



Bay-Delta and SWP Litigation

Consolidated DCP Revenue Bond Validation Action and CEQA Case

Sierra Club, et al. v. California Department of Water Resources (CEQA, designated as lead case)

DWR v. All Persons Interested (Validation)

Sacramento County Superior Ct.
 (Judge Kenneth C. Mennemeier)

- **Validation Action**

- Metropolitan, Mojave Water Agency, Coachella Valley Water District, and Santa Clarita Valley Water Agency have filed answers in support
- Kern County Water Agency, Tulare Lake Basin Water Storage District, Oak Flat Water District, County of Kings, Kern Member Units & Dudley Ridge Water District, and City of Yuba City filed answers in opposition
- North Coast Rivers Alliance et al., Howard Jarvis Taxpayers Association, Sierra Club et al., County of Sacramento & Sacramento County Water Agency, CWIN et al., Clarksburg Fire Protection District, Delta Legacy Communities, Inc, and South Delta Water Agency & Central Delta Water Agency have filed answers in opposition
- Case ordered consolidated with the DCP Revenue Bond CEQA Case for pre-trial and trial purposes and assigned to Judge Earl for all purposes
- DWR’s motions for summary judgment re CEQA affirmative defenses granted; cross-motions by opponents denied
- Dec. 9, 2022 DWR’s motion for summary adjudication of Delta Reform Act and public trust doctrine affirmative defenses granted; NCRA’s motion for summary judgment re same denied

- Trial on the merits held May 15-18, 2023

- Supplemental briefing ordered on three issues with final brief due June 30, 2023

- **CEQA Case**

- 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
- Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project
- Cases ordered consolidated for all purposes
- DWR’s motion for summary judgment granted; Sierra Club’s motion denied



Subject	Status
<p>SWP-CVP 2019 BiOp Cases</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"> • SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases • Federal defendants reinitiated consultation on Oct 1, 2021 • February 24, 2023 court approved the 2023 Interim Operations Plan proposed by federal defendants and state plaintiffs, denied all alternative proposed operations and extended the stay until December 31, 2023
<p>CESA Incidental Take Permit Cases</p> <p>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</p> <p><i>Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA)</i></p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)</i></p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><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></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"> • All 8 cases ordered coordinated in Sacramento County Superior Court • Stay on discovery issued until coordination trial judge orders otherwise • All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases • Certified administrative records lodged March 4, 2022 • State Water Contractors et al. granted leave to intervene in Sierra Club, North Coast Rivers Alliance, Central Delta Water Agency, and San Francisco Baykeeper cases by stipulation • SWC, et al. granted leave to intervene as respondents in <i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources</i> CEQA case • SWC’s renewed motion to augment the administrative records granted in part; a court-appointed referee will review withheld records to determine if the deliberative process privilege applies



<p>CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C091771 (20 Coordinated Cases)</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"> • Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety • Parties have appealed attorneys’ fees and costs rulings • May 11, 2022, court of appeal reversed the trial court’s denial of attorney fees and costs in an unpublished opinion • Opinion ordered published • Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal’s opinion • Sept. 15, 2023 re-hearing on fee motions
<p>COA Addendum/ No-Harm Agreement</p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Rockwell)</p>	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC monitoring • Deadline to prepare administrative record extended to Nov. 18, 2022
<p>Delta Plan Amendments and Program EIR 1 of 4 Consolidated Cases Sacramento County Superior Ct. remaining on appeal Court of Appeal for the Third App. Dist. Case No. C097948 <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> • 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 • Allegations relating to “Delta pool” water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies • Cases consolidated for pre-trial and trial under <i>North Coast Rivers Alliance v. Delta Stewardship Council</i> • SWC granted leave to intervene • Metropolitan supports SWC • Nov. 7, 2022 court ruled in favor of Delta Stewardship Council on all claims • Orders denying all claims and final judgments entered Nov. 22, 2022 • Notice of appeal filed in <i>North Coast Rivers Alliance, et al.</i> case



	<ul style="list-style-type: none"> • August 8, 2023 Appellant North Coast Rivers Alliance's appendix and opening brief due
<p>SWP Contract Extension Validation Action Court of Appeal for the Third App. Dist. Case No. C096316 <i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> • DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 7 other SWCs filed answers in support of validity to become parties • Jan. 5-7, 2022 Hearing on the merits held with CEQA cases, below • Final statement of decision in DWR's favor filed March 9, 2022 • Final judgment entered and served • C-WIN et al., County of San Joaquin et al. and North Coast Rivers Alliance et al. filed notices of appeal • Validation and CEQA cases consolidated on appeal • Briefing completed May 30, 2023
<p>SWP Contract Extension CEQA Cases Court of Appeal for the Third App. Dist. Case Nos. C096384 & C096304 <i>North Coast Rivers Alliance, et al. v. DWR</i> <i>Planning & Conservation League, et al. v. DWR</i></p>	<ul style="list-style-type: none"> • Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • Deemed related to DWR's Contract Extension Validation Action and assigned to Judge Culhane • Administrative Record completed • DWR filed its answers on September 28, 2020 • Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases • Final statement of decision in DWR's favor denying the writs of mandate filed March 9, 2022 • Final judgments entered and served • North Coast Rivers Alliance et al. and PCL et al. filed notices of appeal • Appeals consolidated with the validation action above



<p>Delta Conveyance Project Soil Exploration Cases</p> <p><i>Central Delta Water Agency, et al. v. DWR</i> Sacramento County Superior Ct. (Judge Chang)</p> <p><i>Central Delta Water Agency, et al. v. DWR (II)</i>, Sacramento County Super. Ct. (Judge Acquisto)</p>	<ul style="list-style-type: none"> • Original case filed August 10, 2020; new case challenging the second addendum to the CEQA document filed Aug. 1, 2022 • Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta • 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 • 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 • DWR's petition to add the 2020 CEQA case to the <i>Department of Water Resources Cases</i>, JCCP 4594, San Joaquin County Superior Court denied • Hearing on the merits held Oct.13, 2022 • Dec. 2, 2022 ruling on the merits granting the petition with respect to two mitigation measures and denying on all other grounds • Dec. 23, 2022 court order directing DWR to address the two mitigation measures within 60 days while declining to order DWR to vacate the IS/MND • March 27, 2023 court entered judgment and issued a writ after ordering and considering supplemental briefing • May 5, 2023 court granted DWR's motion to discharge the writ and dismiss the case • May 18, 2023 Notice of Appeal filed • July 28, 2023 Hearing on motion for attorneys' fees
<p>Water Management Tools Contract Amendment</p> <p><i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Aquisto)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Aquisto)</p>	<ul style="list-style-type: none"> • Filed September 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA • NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief • SWC motion to intervene in both cases granted • Dec. 20, 2022 DWR filed notice of certification of the administrative record and filed answers in both cases



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

Cases	Date	Status
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	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, 2020	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, 2021	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.
	April 11, 2022	Court entered order of voluntary dismissal of parties' WaterFix claims and cross-claims.
2014, 2016, 2018	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.
	Oct. 27	Parties submitted to the court a joint stipulation and proposed order staying discovery through Dec. 8 and resetting pre-trial deadlines.
	Oct. 29	Court issued order staying discovery through Dec. 8 and resetting pre-trial deadlines, while the parties discuss the prospect of settling some or all remaining claims and crossclaims.
	Jan. 12, 2022	Case Management Conference. Court ordered a 35-day case stay to allow the parties to focus on settlement negotiations, with weekly written check-ins with the court; and directed the parties to meet and confer regarding discovery and deadlines.



Cases	Date	Status
2014, 2016, 2018 (cont.)	Feb. 22	Court issued order resetting pre-trial deadlines as proposed by the parties.
	Feb. 22	Metropolitan and SDCWA each filed motions for summary adjudication.
	April 13	Hearing on Metropolitan’s and SDCWA’s motions for summary adjudication.
	April 18	Parties filed supplemental briefs regarding their respective motions for summary adjudication, as directed by the court.
	April 18	Court issued order resetting pre-trial deadlines as proposed by the parties.
	April 29	Parties filed pre-trial briefs.
	April 29	Metropolitan filed motions in limine.
	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 Proposition 26, finding that Proposition 26 applies to Metropolitan’s rates and charges, with the court also stating that whether Metropolitan violated Proposition 26 is a separate issue; and cross-claims and affirmative defenses regarding applicability of Government Code section 54999.7, finding that section 54999.7 applies to Metropolitan’s rates. Court denied SDCWA’s motion on certain other cross-claims and affirmative defenses.
	May 13	Pre-trial conference; court denied Metropolitan’s motions in limine.
	May 16	Court issued order setting post-trial brief deadline and closing arguments.
	May 16-27	Trial occurred but did not conclude.



Cases	Date	Status
2014, 2016, 2018 (cont.)	May 23, June 21	SDCWA filed motions in limine.
	May 26, June 24	Court denied SDCWA's motions in limine.
	June 3, June 24, July 1	Trial continued, concluding on July 1.
	June 24	SDCWA filed motion for partial judgment.
	July 15	Metropolitan filed opposition to motion for partial judgment.
	Aug. 19	Post-trial briefs filed.
	Sept. 14	Court issued order granting in part and denying in part SDCWA's motion for partial judgment (granting motion as to Metropolitan's dispute resolution, waiver, and consent defenses; denying motion as to Metropolitan's reformation cross-claims and mistake of fact and law defenses; and deferring ruling on Metropolitan's cost causation cross-claim).
	Sept. 21	Metropolitan filed response to order granting in part and denying in part SDCWA's motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	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	The parties' filed proposed trial statements of decision.
	Dec. 21	SDCWA filed the parties' stipulation and proposed order for judgment on Water Stewardship Rate claims for 2015-2020.
	Dec. 27	Court entered order for judgment on Water Stewardship Rate claims for 2015-2020 as proposed by the parties.
	March 14, 2023	Court issued tentative statement of decision (tentatively ruling in Metropolitan's favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan's favor)
March 14	Court issued amended order granting in part and denying in part SDCWA's motion for partial judgment (ruling that Metropolitan's claims	



		for declaratory relief regarding cost causation are not subject to court review).
	March 29	SDCWA filed objections to tentative statement of decision
	April 3	Metropolitan filed response to amended order granting in part and denying in part SDCWA's motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	April 25	Court issued statement of decision (ruling in Metropolitan's favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan's favor)
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.
	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	\$1,277,187
	Delta Conveyance Project Bond Validation-CEQA Litigation	185899	09/21	\$250,000
	MWD Drone and Airspace Issues	193452	08/20	\$50,000
	Equal Employee Opportunity Commission Charge	200462	03/21	\$20,000
	DFEH Charge (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
	MWD MOU Negotiations**	201893	10/05/21	\$100,000
	DFEH Charge (DFEH Number 202109-14694608)	203460	02/22	\$35,000
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	\$185,000
	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



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	HR Matter	203450	03/22	\$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
Cislo & Thomas LLP	Intellectual Property	170703	08/17	\$75,000
Cummins & White LLP	Board Advice	207941	05/22	\$10,000
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
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	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$500,000
	Tax Issues	180200	04/19	\$50,000
	Alternative Project Delivery (ADP)	207961	10/22	\$250,000
	Faith v. MWD	207963	10/22	\$100,000
Hausman & Sosa, LLP	MOU Hearing Officer Appeal	201892	09/21	\$95,000
	MOU Hearing Officer Appeal	207949	07/22	\$25,000
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
Horvitz & Levy	SDCWA v. MWD	124100	02/12	\$1,250,000
	General Appellate Advice	146616	12/15	\$100,000
	Colorado River	203464	04/22	\$100,000
Innovative Legal Services, P.C.	Employment Matter	211915	01/19/23	\$100,000
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
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	\$250,000
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$50,000



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	\$229,724
	FLSA Audit	180199	02/19	\$50,000
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
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	\$2,300,000
	Pure Water Southern California	207967	11/22	\$100,000
	PFAS Compliance Issues	207968	11/14/22	\$100,000
Miller Barondess, LLP	SDCWA v. MWD	138006	12/14	\$600,000
Morgan, Lewis & Bockius	SDCWA v. MWD	110226	07/10	\$8,750,000
	Project Labor Agreements	200476	04/21	\$100,000
Musick, Peeler & Garrett LLP	Colorado River Aqueduct Electric Cables Repair/Contractor Claims	193461	11/20	\$1,700,000
	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 Fullbright US LLP*	Bond Counsel	200466	07/21	N/A



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Olson Remcho LLP	Government Law	131968	07/14	\$400,000
	Executive Committee/Ad Hoc Committees Advice	207947	08/22	\$60,000
	Public Records Act	207950	08/22	\$45,000
	Advice/Assistance re Proposition 26/Election Issues	211922	05/23	\$100,000
Paul Hastings LLP	MWD v. California Department of Fish and Wildlife	207969	3/23	\$100,000
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
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000
Seyfarth Shaw LLP	Claim (Contract #201897)	201897	11/04/21	\$200,000
	Claim (Contract #203436)	203436	11/15/21	\$350,000
	Claim (Contract #203454)	203454	01/22	\$160,000
	Claim (Contract #203455)	203455	10/21	\$175,000
	Reese v. MWD	207952	11/22	\$400,000
	General Labor/Employment Advice	211917	3/23	\$100,000
Sheppard Mullin Richter & Hampton	Rivers v. MWD	207946	07/22	\$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
Western Water and Energy	California Independent System Operator-Related Matters	193463	11/20/20	\$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 9, 2023

Chair Sutley called the meeting to order at 10:32 a.m.

Members present: Chair Sutley, Vice Chair Garza, Directors Cordero (teleconference posted location), Dick, Kurtz, McCoy, Miller, and Peterson (teleconference posted location).

Members absent: Directors Camacho, Ramos, Repenning, and Seckel.

Other Directors present: Chairman Ortega, Directors Abdo, Armstrong, Chacon, Dennstedt, Erdman, Faessel, Goldberg, Lefevre, Morris, Pressman (teleconference posted location), and Smith.

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

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

None

2. MANAGEMENT REPORTS

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

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

- A. Subject: Approval of the Minutes of the Legal and Claims Committee for March 13, 2023 and Legal and Claims Committee Workshop for March 28, 2023

4. CONSENT CALENDAR ITEMS – ACTION

7-6 Subject: Authorize an increase in the maximum amount payable under contract with Thompson Coburn LLP for legal advice on state and federal energy regulatory and contractual matters by \$200,000 to a maximum amount payable of \$300,000; the General Manager has determined that this proposed action is exempt or otherwise not subject to CEQA

Presented by: No presentation was given.

Motion: Authorize an increase in the maximum amount payable under contract with Thompson Coburn LLP for legal advice on state and federal energy regulatory and contractual matters by \$200,000 to a maximum amount payable of \$300,000.

7-7 Subject: Approve changes in the Administrative Code to clarify provisions relating to Board committees and the role of the Vice Chairs of the Board, to delete references to certain Ad Hoc Committees, and to correct the pay grade for Board Executive Secretary due to elimination of the job title of Board Administrator; the General Manager has determined that this proposed action is exempt or otherwise not subject to CEQA

Presented by: General Counsel Marcia Scully

Motion: Approve changes in the Administrative Code to clarify provisions relating to Board committees and the role of the Vice Chairs of the Board, to delete references to certain Ad Hoc Committees, and to correct the pay grade for Board Executive Secretary due to elimination of the job title of Board Administrator.

The following Directors provided comments or asked questions:

1. Miller
2. Dick
3. Armstrong
4. Sutley
5. Ortega
6. Faessel
7. Peterson
8. Garza

Staff responded to Directors' questions and comments.

Director Miller made a motion, seconded by Director Kurtz, to approve the consent calendar consisting of items 3A, 7-6, and 7-7.

The vote was:

Ayes: Directors Cordero, Dick, Garza, Kurtz, McCoy, Miller, Peterson, and Sutley
Noes: None
Abstentions: Sutley (item 3A)
Absent: Directors Camacho, Ramos, Repenning, and Seckel

The motion for Item 3A passed by a vote of 7 ayes, 0 noes, 1 abstention, and 4 absent

The motion for Items 7-6 and 7-7 passed by a vote of 8 ayes, 0 noes, 0 abstention, and 4 absent

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

8-7 Subject: Report on litigation in Joshua Rivers v. Metropolitan Water District, Los Angeles County Superior Court Case No. 22STCV09741; and authorize increase in maximum amount payable under contract for legal services with Sheppard, Mullin, Richter & Hampton LLP in the amount of \$150,000 for a total amount not to exceed \$250,000; 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)]

Presented by: Senior Deputy General Counsel Tony Zepeda

Motion: Authorize the General Counsel to increase the maximum amount payable under a contract with Sheppard Mullin Richter & Hampton LLP for legal services by \$150,000, to an amount not to exceed \$250,000

In closed session the committee heard a report on this item. In open session, the committee voted on this item.

Director Dick made a motion, seconded by Director Miller, to approve Item 8-7:

The vote was:

Ayes: Directors Cordero, Dick, Garza, Kurtz, McCoy, Miller, Peterson, and Sutley
Noes: None
Abstentions: None
Absent: Directors Camacho, Ramos, Repenning, and Seckel
Item 8-7 passed by a vote of 8 ayes, 0 noes, 0 abstention, and 4 absent.

8-8 Subject: Authorize filing a cross-complaint in Oswalt v. The Metropolitan Water District of Southern California, San Diego County Superior Court Case No. 37-2023-00009934-CU-PO-CTL; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation and initiating litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1) and 54956.9(d)(4)]

Presented by: Senior Deputy General Counsel Betty Kuo Brinton

Motion: Authorize filing a cross-complaint in Oswalt v. The Metropolitan Water District of Southern California, San Diego County Superior Court Case No. 37-2023-00009934-CU-PO-CTL

In closed session the committee heard a report on this item and action was taken to authorize filing a cross-complaint in Oswalt v. Metropolitan.

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

None

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on July 10, 2023.

Meeting adjourned at 11:46 a.m.

Nancy Sutley
Chair



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

7/10/2023 Board Meeting

8-2

Subject

Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call vote is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

The proposed amendment to the Administrative Code regarding the Consent Calendar (1) will delete the requirement that matters may not be placed on consent if a roll call vote is required; and (2) will increase the maximum cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million. This amendment will expedite Board (and committee) consideration of matters in compliance with the requirements of the Brown Act. The Brown Act requires a roll call vote when members of the Board are participating remotely. This amendment will not change the authority of the General Manager or members of the Board to remove items on consent for separate deliberation and vote.

Details

This letter proposes to amend Metropolitan Water District Administrative Code Section 2121 regarding the Consent Calendar. The proposed amendment will delete a requirement that matters may not be placed on consent if a roll call vote is required and will increase the maximum cost of items on consent from \$2 million to \$10 million.

The following proposed amendment is to Division II, Chapter 1, Article 2, Section 2121 subsection (c) with overstrikes reflecting deletions and underlining reflecting additions:

§ 2121. Consent Calendar.

(a) Consent Calendar items shall be set forth in a separate section of the Board's agenda.

(b) Matters for the Consent Calendar shall be recommended by the Department Heads and shall be submitted to the Board Executive Secretary not less than seven working days prior to the meeting of the Board and, except as provided below, pertinent materials sufficient to enable a member to formulate an opinion on each Consent Calendar item shall be included with the agenda mailed to directors. Such materials need not be included with the agenda as to matters which are to be considered in committee in closed session, but such materials shall be available at the meeting of the Board for distribution to directors who request them.

(c) Matters may not be placed on the Consent Calendar ~~if a roll call vote is required~~; if a vote other than a simple majority is required; or if the amount involved is ~~\$2,000,000~~ \$10,000,000 or more.

The following proposed amendment is as it will appear in the Administrative Code if the changes are approved:

§ 2121. Consent Calendar.

(a) Consent Calendar items shall be set forth in a separate section of the Board's agenda.

(b) Matters for the Consent Calendar shall be recommended by the Department Heads and shall be submitted to the Board Executive Secretary not less than seven working days prior to the meeting of the Board and, except as provided below, pertinent materials sufficient to enable a member to formulate an opinion on each Consent Calendar item shall be included with the agenda mailed to directors. Such

materials need not be included with the agenda as to matters which are to be considered in committee in closed session, but such materials shall be available at the meeting of the Board for distribution to directors who request them.

(c) Matters may not be placed on the Consent Calendar if a vote other than a simple majority is required or if the amount involved is \$10,000,000 or more.

The purpose of placing items on the Consent Calendar is to expedite Board (and committee) consideration of matters and thus allow members to devote more time to other matters. The proposed amendment, to the requirement that matters may not be placed on consent if a roll call vote is required, allows items to be placed on consent that do not otherwise require a separate roll call vote. The Brown Act requires a roll call vote when members of the Board are participating in a Board or committee meeting remotely. The current practice is to approve the Consent Calendar with a single vote. The proposed amendment to increase the maximum cost of items on consent to \$10 million will allow more items to be included on the Consent Calendar. The current limit of \$2 million was adopted in 1991. Due to inflation, the magnitude of projects that may be placed on the Consent Calendar will not be significantly increased. The proposed amendment will not change the authority of the General Manager or individual members of the Board to remove an item from the Consent Calendar for separate deliberation and vote at the time of consideration.

Policy

Metropolitan Water District Code Section 2121: Consent Calendar

Metropolitan Water District Code Section 2122: Committee Procedure

Metropolitan Water District Code Section 2123: Board Meeting Procedure

Metropolitan Water District Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because it would not cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million.

Fiscal Impact: None

Business Analysis: Approval will expedite consideration of undisputed or non-controversial matters and thus allow members to devote more time to other matters.

Option #2


Do not approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million.

Fiscal Impact: None

Business Analysis: Approval will not expedite consideration of undisputed or non-controversial matters.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

6/28/2023

Date

Ref# 112690863



Legal & Claims Committee

Approve Amendment to the Administrative Code

Item 8-2

July 10, 2023

Current Consent Calendar Requirements

Admin Code § 2121(c). Consent Calendar

(c) Matters prohibited from being placed on Consent:

- if a roll call vote is required;
- if a vote other than simple majority is required; or
- If the amount involved is \$2,000,000 or more.

Admin Code § 2121(c). Consent Calendar

(c) Matters prohibited from being placed on Consent:

Requested
Change

- ~~if a roll call vote is required;~~
- if a vote other than simple majority is required; or
- If the amount involved is ~~\$2,000,000~~ **\$10,000,000** or more.

Percentages of Items Needing Board Approval (Projected Work 2023-2028)

Construction Contracts Data

Value	% of CIP Spend on Consent	% of CIP Spend NOT on Consent	% of Jobs Awarded on Consent	% of Jobs Awarded NOT on Consent
Up to \$2M	3%	97%	38%	62%
Up to \$5M	10%	90%	60%	40%
Up to \$10M	20%	80%	75%	25%

Options

Option #1

Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million.

Option #2

Do not approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million.





• **Legal and Claims Committee**

July 10, 2023 Committee Meeting

7a

Subject

General Counsel’s Business Plan for fiscal year 2023/2024

Role of the General Counsel

The role of the General Counsel is to serve as the attorney for The Metropolitan Water District of Southern California; to represent Metropolitan in all actions and proceedings; to serve as the legal advisor to the Board and Officers of Metropolitan; and to cooperate with and assist the General Manager and his staff by providing a full range of legal services in a professional, timely, cost effective and creative manner.

Description

The General Counsel’s fiscal year 2023/2024 Business Plan establishes the anticipated focus of the Legal Department for the next fiscal year. The Business Plan focuses on the work required to support Metropolitan’s priorities, as described in the General Manager’s Business Plan and the Legal Department budget for FY 2023/2024.

Drivers:

Unplanned matters - Litigation:

The General Counsel represents Metropolitan in all actions and proceedings. In over 90% of such matters, Metropolitan is the defendant. The Department must be flexible and capable of responding on short notice to litigation and other unanticipated matters. Although the nature and timing of matters is unplanned, the General Counsel’s Office anticipates that claims and litigation will be filed and Metropolitan will be required to resolve or defend.

Priorities of the Board and the General Manager

Equally important to representing Metropolitan in disputed matters, the role of the Department is to support the priorities established by the Board of Directors and the General Manager. The goal of the Legal Department is to provide a full range of legal services in a professional, timely, cost effective and creative manner that minimizes risk to Metropolitan.

The proposed Business Plan (**Attachment 1**) includes anticipated activities consistent with the priorities of Metropolitan as set forth in the Budget and the General Manager’s Business Plan.

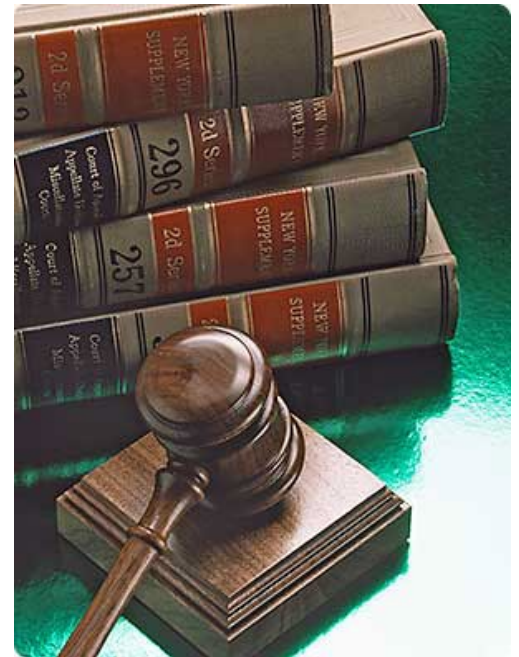
Policy

Metropolitan Water District Administrative Code Section 6436(b): Annual and Quarterly Reports to Legal and Claims Committee

Marcia Scully
General Counsel

July 6, 2023
Date

The Metropolitan Water District of Southern California



General Counsel’s Business Plan Fiscal Year 2023/2024

Purpose: The General Counsel’s fiscal year 2023/2024 Business Plan establishes the anticipated focus of the Legal Department for the next fiscal year. The role of the Department is to support the priorities established by the Board of Directors and the General Manager, and to provide a full range of legal services in a professional, timely, cost effective and creative manner.

	Climate Adaptation Master Plan	2
	Water Supply Reliability	3
	District Governance and Support	7
	Legislation	8
	Workforce/Human Resources	9
	Real Property	10
	Finance	11
	Disputed Matters/Litigation	12
	Technology	13
	Corporate Resources/District Infrastructure	14
	Operations	15
	Energy Costs and Management	16
	Legal Department Administration	17

Climate Adaptation Master Plan

Provide assistance, as requested, in the development and implementation of the Climate Adaptation Master Plan, including provision of advice regarding:

- Impact to Metropolitan’s business mode;
- Impact to Metropolitan’s financial structure/customer base; and
- Development of programs to benefit disadvantaged communities.



Climate Adaptation Master Plan

Water Supply Reliability

Colorado River

Legal advice regarding proposed voluntary or potential mandatory conservation measures.

Assist with drafting agreements necessary to implement short- and long-term conservation measures required by the Bureau of Reclamation (Bureau) to stabilize Lake Mead and Lake Powell, including forbearance and fallowing agreements, and advise regarding the required actions for approval.

Review and assist with preparation of requests for federal funding.

Provide legal support for Metropolitan in renegotiation of the Colorado River Interim Guidelines, and related environmental studies and permitting coverage.

Represent Metropolitan in the implementation of agreements with the Republic of Mexico.

Represent Metropolitan in other administrative proceedings and litigation relating to the Colorado River.

Continue to monitor and comment on Colorado River water quality and matters that may affect it, including:

- Remediation of groundwater contamination at Topock;
- Remediation of the former Tronox site and use of settlement funds from the Tronox adversary action, as well as remediation of the former PEPCON/AMPAC site;
- Investigation and remediation of the Hoover Dam waste disposal site; and
- Changes to state and federal perchlorate and chromium 6 regulations.

Pure Water Southern California

Assist with the development and implementation of the proposed Pure Water Southern California recycled water project with Los Angeles County Sanitation Districts, including assistance with environmental studies and permitting, right-of-way acquisition, preliminary design, construction contracts, grant funding applications, regulatory compliance issues and other matters.

Provide legal support to secure grant funding for planning and infrastructure projects, including the Pure Water Southern California Project.

State Water Project (SWP)

Represent Metropolitan, as a separate party or working through the State Water Contractors (SWC), in litigation and regulatory proceedings relating to:

- Permits and operation of the SWP;
- Water diversions;
- Delta or SWP supplies; and
- The Delta Plan and regulations.

Provide legal advice and representation regarding compliance with the Delta Plan and regulations adopted by the Delta Stewardship Council.

Provide legal support regarding Delta science and habitat restoration objectives.

Represent Metropolitan's interests before the State Water Resources Control Board (SWRCB) as a separate party or through the SWC on matters of concern to Metropolitan, including:

- Bay Delta Water Quality Control Plan amendments;
- Methyl Mercury TMDL; and
- Protecting stored water releases.

Provide legal support in ongoing negotiations between SWC and Department of Water Resources (DWR) related to various charges in the annual Statement of SWP Charges.

Provide legal advice and support for:

- Metropolitan's and DWR's cooperative efforts relating to SWP infrastructure;
- Development of the SWP Multi-Year Market Pool and similar programs for the sale and purchase of SWP water; and
- Relicensing of the Oroville/Hyatt-Thermalito Power Complex by the Federal Energy Regulatory Commission.

Provide legal advice and support for drought response actions, including potential legislation or regulations affecting SWP supplies.

Continue to assist with negotiation, drafting, and documentation of proposed agreements or amendments to existing agreements, including Metropolitan's SWP contract.

State Water Project Dependent Areas

Assist with permits and capital projects required to provide additional flexibility in the operation of Metropolitan's distribution system, meet the special needs of SWP-dependent member agencies, and address

potential issues resulting from concerns relating to possible invasive species within the SWP.

Groundwater Storage Projects

Assist with contracts for and implementation of Antelope Valley-East Kern Water Agency (AVEK) High Desert Water Bank Groundwater Storage Program.

Assist with analysis of and proposals to continue use of the Arvin-Edison Water Storage District Groundwater Storage Program.

Monitor and assist with programs relating to new regulations and legislation regarding emerging contaminants and contamination in groundwater storage programs.

Delta Conveyance Project (DCP)

Assist with the work required to complete the Environmental Impact Report (EIR) for the revised DCP Program, as well as necessary regulatory approvals and permitting.

Review and analyze proposed legislation, regulations and amendments that may affect implementation of DCP or impact Metropolitan's interest in the Delta.

Continue to assist with negotiations of Voluntary Agreements for approval and implementation of DCP, including allocation of costs and benefits of the Project.

Water Supply Issues

Provide legal advice and support regarding:

- Water supply, delivery, and quality issues and proposed legislation and regulations regarding both regulated and emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS);
- Development and implementation of a legislative and regulatory strategy addressing the Governor's Water Resilience Portfolio;
- Documentation of water transfers and exchanges and development of demand management programs;
- Implementation of the 2020 Integrated Water Resources Plan (IRP) and implementation of the 2020 Urban Water Management Plan (UWMP) and Water Shortage Contingency Plan;
- Preparation of the annual SB 60 Report to the California State Legislature regarding Metropolitan's achievements in conservation, recycling, and groundwater recharge;

Water Supply Reliability

- Assist with the Sites Reservoir planning effort to augment dry-year supplies;
- Preparation of the Annual Drinking Water Quality Report; and
- Development and implementation of emergency conservation measures intended to maximize available supplies.

Continue to monitor and participate as amicus (as appropriate) in litigation regarding:

- The definition and scope of waters of the United States protected under the federal Clean Water Act; and
- EPA determinations and actions to regulate specific contaminants in drinking water.



Water Supply Reliability

District Governance and Support

Administration

Provide timely advice to the Board and committees and the Board Executive Officers and staff on governance and legal compliance matters.

Assist board support staff on matters relating to the board letter and board meeting process and technology.

Work with the Chair of the Board, management, and staff regarding amendments to the Administrative Code, as applicable.

Assist with review and updates to Metropolitan's Operating Policies, and other internal policies and procedures.

Continue to coordinate Metropolitan's responses to Public Records Act requests.



Legislation

Analyze proposed legislation affecting Metropolitan and assist with comments and draft amendments, as requested.

Prepare and/or review Metropolitan-proposed legislation and amendments.

Assist with the development of legislative strategy.

Participate in and support industry groups regarding proposed legislation, including the review and drafting of comments on proposed regulations and legislation.



Legislation

Workforce/Human Resources

Provide representation and proactive counsel on workforce issues and deferred compensation plan matters.

Represent Metropolitan in:

- Pre-litigation employment claims;
- Employment litigation;
- California Public Employment Relations Board (PERB) matters;
- Grievances and hearing officer appeals.

Provide legal advice and support concerning:

- Metropolitan Memoranda of Understanding (MOU) with Metropolitan's Bargaining Units;
- Metropolitan Administrative Code provisions regulating employee relations and personnel matters;
- Employee benefits;
- Bargaining unit consultation and negotiations;
- Personnel transactions, including recruitment, promotions, transfers, and separations;
- Workforce housing and recreational activities for employees residing at Metropolitan's desert facilities;
- Equal Employment Opportunity (EEO) matters, including mediation of federal U.S. Equal Employment Opportunity Commission (EEOC) and state Department of Fair Employment and Housing (DFEH) complaints, as requested; and
- Misconduct matters and threat assessments, as requested.

Supervise consultant investigations concerning:

- Misconduct, as referred by Human Resources or management; and
- Incident response investigations, as requested by management.

Provide specialized advice on Metropolitan's deferred compensation plans, including:

- The plan governance structure;
- The recordkeeper contract;
- Plan amendments; and
- Plan loans and death benefits.

Workforce/Human Resources

Real Property

Assist Real Property Development and Management Group (RPDAM) in:

- Negotiation and documentation of real property acquisitions and dispositions;
- Disposal of surplus real property;
- Leasing and licensing of Metropolitan property; and
- Grant and acceptance of easements and entry permits.

Support the efforts of RPDAM to manage Metropolitan's property.

Work with RPDAM to eliminate unauthorized encroachments on Metropolitan's property.

Work with RPDAM and Security Management Unit to enhance security of Metropolitan's property.

Provide assistance with annexation matters.

Participate in the Security Task Force.



Real Property

Finance

Provide legal advice regarding adoption of rates and charges and levying of ad valorem taxes.

Provide legal support for Metropolitan’s financial transactions, including issuance of bonds and other debt instruments.

Provide review of legal compliance with financial documents in connection with the annual audit and quarterly financial reports.

Assist in development of proposed financing structures.

Assist in the preparation of accurate and timely disclosures to the municipal markets.

Monitor and report on litigation and legislation relating to public agency water rates at the wholesale and retail levels and public finance.

Provide legal support for Metropolitan’s financial planning in relation to its capital investment plan and other long-term investments.

Provide training to staff and the Board regarding financial disclosures.



Disputed Matters/Litigation

Represent Metropolitan in disputed matters.

Defend Metropolitan against claims and litigation arising from construction contracts, operations, and CEQA compliance.

Provide amicus support in litigation impacting Metropolitan's interests.

Provide support and advise on the government claims process, workers' compensation claims and litigation and settlements.

Continue to represent Metropolitan's interests in pending litigation, SWP and Bay-Delta related litigation regarding:

- DWR funding of the Delta Conveyance Project;
- Permits relating to the operation of the SWP;
- Delta Plan; and
- SWP contract.

Anticipated unknown new matters

- Government Code claims and tort litigation;
- CEQA issues;
- Employment matters;
- Construction-related litigation;
- Eminent domain and real property issues;
- Finance-related matters;
- Notices of Violation from Cal-OSHA/AQMD, fire departments and other regulatory entities;
- Rate litigation; and
- Other matters.

Disputed Matters/Litigation

Technology

Collaborate on information governance initiatives and policies with:

- Chief Sustainability Resiliency and Innovation Officer;
- Information Technology Group;
- Administrative Services;
- External Affairs; and
- Human Resources.

Continue to work collaboratively with staff to advise on:

- Appropriate use of new technology and equipment;
- Training and pilot testing in use of Artificial Intelligence (AI) applications;
- The use of drones, mobile devices, and MWD applications;
- Cybersecurity issues, incident response and reporting, new cybersecurity regulations, and the cybersecurity operations center;
- Data management, secure data sharing, and records retention;
- Calendaring and document management system; and
- Website content management, access, and regulatory compliance.

Work with appropriate business units for a district-wide calendaring system to track key dates for agreement terms.

Provide training to the Board on emerging legal issues relating to technology and social media, as needed.



Corporate Resources/ District Infrastructure

Provide legal support with respect to contracting for:

- Capital investment projects;
- Repair and replacement projects;
- Professional services; and
- Procurement.

Provide legal support for CEQA compliance of Metropolitan’s capital projects and other discretionary actions.

Analyze potential operational and environmental impacts of other agencies’ projects on Metropolitan’s properties and facilities.

Provide legal support to Engineering and Contracting Services staff on construction, procurement, and professional services contracting and solicitations.

Assist Business Outreach staff in the formulation and revision of policies related to small, regional, veteran-owned, and historically underutilized businesses.

Assist in the management and development of a new records retention schedule.



Operations

Provide legal support for operational safety and environmental compliance.

Provide legal assistance with:

- Negotiating and preparing new or amended service connection agreements;
- Regulatory and permitting issues relating to both water deliveries and changes to Metropolitan’s infrastructure to support operational requirements;
- CEQA compliance for operations and maintenance projects; and
- Amendment and implementation of AVEK Groundwater Storage Agreement.

Provide legal support with the development of a FEMA Hazard Mitigation Plan.

Work with the SWRCB and Regional Boards as they revise municipal stormwater discharge permits to ensure that Metropolitan maintains the ability to discharge system water as part of maintenance operations.

Continue to represent Metropolitan in water quality litigation, including:

- Monitoring Arvin-Edison Water Storage District’s (Arvin-Edison) and Semitropic Water Storage District’s (Semitropic) lawsuits against the manufacturers and distributors regarding 1,2,3-trichloropropane (TCP) in Arvin-Edison’s and Semitropic’s groundwater.



Energy Costs and Management

Assist with implementation of the Energy Management Plan, including providing advice on:

- Wholesale energy transactions;
- Sustainable energy projects;
- Energy-related contracts; and
- Legislation and regulations.

Assist staff with long-term resource and transmission planning and compliance with national electric reliability standards.

Assist staff with implementing the Climate Action Plan, Energy Sustainability Plan, Transmission Strategic Plan, and Risk Management Policy.

Assist with implementation of contracts with Southern California Edison, the Arizona Electric Power Cooperative, Inc., and the California Independent System Operator for the operation and resource management of the Colorado River Aqueduct Transmission System.

Provide legal support to ensure that SWP energy needs are met in a cost-effective and sustainable manner.

Participate in or monitor proceedings to protect and promote Metropolitan’s financial and regulatory interests at:

- Federal Energy Regulatory Commission;
- California Independent System Operator;
- California Public Utilities Commission; and
- Other agencies, as appropriate.

Monitor climate change litigation and legislation pertaining to carbon-free generation, DWR energy procurement, and regionalization of transmission operations.

Energy Costs and Management

Legal Department Administration

Aggressively manage outside counsel costs, while obtaining effective representation to protect Metropolitan’s interests.

Upgrade technology within the Legal Department and improve the efficient use of Metropolitan resources.

Training in new technologies, including AI and cybersecurity.

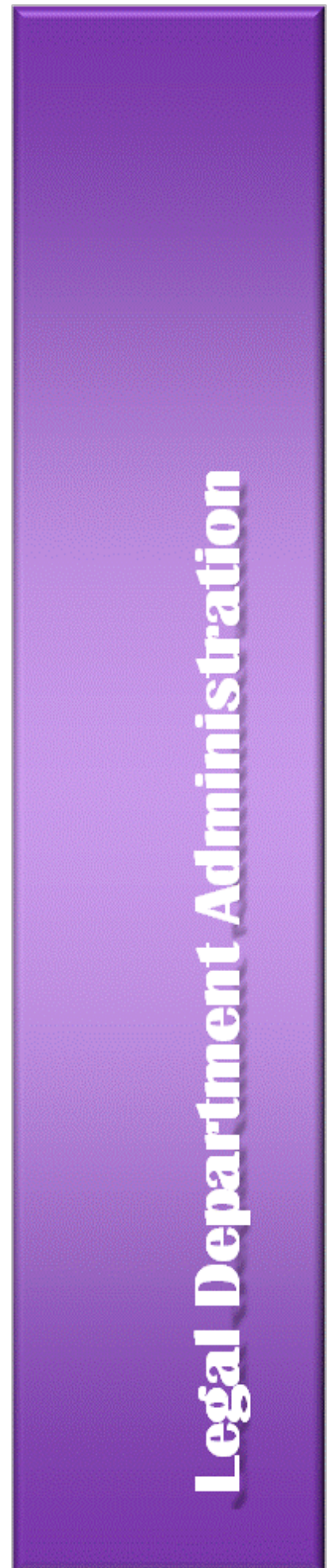
Provide ongoing training opportunities related to:

- Minimum Continuing Legal Education compliance;
- Litigation skills;
- Drafting of contracts and other documents;
- Oral and written communication;
- Presentation skills;
- Leadership and management skills; and
- Various substantive areas.

Develop and implement succession planning.

Provide an appropriate level of staffing.

Provide timely employee evaluations.





GENERAL COUNSEL'S BUSINESS PLAN

FY 2023/2024

The Role of the Legal Department

1. Represent Metropolitan in Disputed Matters
 - Existing Matters
 - Resolve early/fairly prior to litigation or hearing
 - Anticipated but Unknown Matters
 - Be prepared to respond
2. Assist GM's staff with MWD Priorities

Assist GM's Staff with MWD's Priorities

- Climate Adaptation Master Plan
 - Business/Financial Models
 - Disadvantaged Communities
- Water Supply Reliability
 - Colorado River
 - SWP-Dependent Areas
 - Pure Water Southern California
 - Storage/Contaminants

Assist GM's Staff with MWD's Priorities (continued)

- Legislative Review
- Financial Planning Model
- Technology
 - Collaborate with IT/Other Groups to Test New Technology
 - Chat GPT/AI
 - Training in new technology
- District Calendaring System
 - Collaborate with IT and other groups to develop system and minimize risk

Legal Department Priorities

- Increase training
- Upgrade technology and test new technologies
- Provide appropriate level of staffing

Questions