

MINUTES
REGULAR MEETING OF THE
BOARD OF DIRECTORS
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
May 10, 2022

52806 The Board of Directors of The Metropolitan Water District of Southern California met in regular session on Tuesday, May 10, 2022.

Chairwoman Gray called the teleconference meeting to order at 12:00 P.M.

52807 The Meeting was opened with an invocation by Kushan J. Kurukulasuriya, Engineer, Engineering Services Group.

52808 The Pledge of Allegiance was given by Director Larry D. Dick, Municipal Water District of Orange County.

Chairwoman Gray made remarks regarding Asian Americans and Pacific Islanders Month and welcomed Metropolitan's first Diversity, Equity, and Inclusion Officer Liji Thomas.

52809 Board Secretary Abdo administered the roll call. Those responding present were: Directors Abdo, Ackerman, Atwater, Blois, Camacho, De Jesus, Dennstedt, Dick, Erdman, Faessel, Fellow, Goldberg, Gray, Hawkins, Jung, Kurtz, Lefevre, Luna, McCoy, Miller, Morris, Ortega, Peterson, Pressman, Ramos, Record, Repenning, Smith, Tamaribuchi, and Williams.

Those not responding were: Directors Apodaca, Cordero, Fong-Sakai, Kassakhian, Petersen, Phan, and Quinn.

Director Sutley entered the meeting after roll call.

Board Secretary Abdo declared a quorum present.

52810 Member Agency Overview: Anthony Goff, General Manager, Calleguas Municipal Water District.

Director Blois introduced General Manager Anthony Goff who presented a member agency overview for the Calleguas Municipal Water District.

52811 Chairwoman Gray invited members of the public to address the Board on matters within the Board's jurisdiction.

	Name	Affiliation	Item
1.	Doug Obegi	Sr. Attorney, Natural Resources Defense Council, Inc.	7-9
2.	Caty Wagner	Sierra Club of California	7-9 & Sites Reservoir
3.	Dr. Hugh Bialecki	President, State Water Board Association in San Bernadino	7-9
4.	Annelisa Moe	Heal the Bay	7-2 & State Water Project
5.	Alan Shanahan	Executive President, AFSCME 1902	Shaw Report, State Audit, SB 60
6.	Maura Monagan	Los Angeles WaterKeeper	7-2 & 7-9
7.	Nancy Blastos	Redlands Resident	7-9
8.	John Mendoza	Pomona Resident	7-9

Chairwoman Gray addressed the following: Other Matters and Reports.

52812 Chairwoman Gray asked if there were any changes to the report of events attended by Directors at Metropolitan's expense during the month of April as previously posted and distributed to the Board. No amendments were made.

Director Sutley entered the meeting.

52813 Chairwoman Gray referred to her monthly report, which was previously posted and distributed to the Board. Chairwoman stated she had nothing to add to her report.

52814 Regarding matters relating to Metropolitan's operations and activities, General Manager Hagekhalil, reported on the following:

1. ACWA Conference.
2. Metropolitan's Climate Action Plan.
3. Conservation Efforts.
4. Efforts to negotiate the Memorandum of Understanding with The Metropolitan Water District of Southern California and The American Federation of State, County, and Municipal Employees, Local 1902.
5. Tracking system for the State Audit Report.

He also introduced the first Chief Diversity, Equity, and Inclusion Officer Liji Thomas.

Additional information on the General Manager's activities may be found in his written monthly report.

52815 General Counsel Scully stated she had nothing to add to her written report.

52816 General Auditor Riss stated he had nothing to add to his report.

52817 Ethics Officer Salinas, reported on the following:

1. Reported that at the May 24, 2022, Audit & Ethics Committee meeting he will give an overview of the State Audit report findings in regard to the future of the Ethics Office.

Chairwoman Gray addressed the Consent Calendar Items for May 2022.

52818 Chairwoman Gray asked Directors if there were any comments or discussions on the approval of the Minutes of the Regular Meeting for April 12, 2022, and the Special Meeting for April 26, 2022 (Agenda Item 6A). No comments or requests were made.

52819 Adopt resolution to continue remote teleconference meetings pursuant to the Brown Act Section 54953(e) for meetings of Metropolitan's legislative bodies for a period of 30 days (Agenda Item 6B). No questions or comments were made.

52820 Approval of Committee Assignments (Agenda Item 6C). There were no committee assignments.

52821 Chairwoman Gray addressed the Consent Calendar Items – Action for May 2022.

Chairwoman Gray called on the Committee Chairs to give a report of the Consent Calendar Action Items as discussed at their Committees.

Director McCoy requested that Item 7-11 be voted on separately from Consent Calendar Action Items.

Director Peterson requested to be logged as voting No on Item 6B.

Director Smith recused himself from all participation for Item 7-7, due to his ownership in Black & Veatch stock.

Director Blois recused himself from all participation and will leave the meeting to completion for Item 7-4 if it is pulled from consent, due to his landlord-tenant relationship with Blois Construction and has received rental income from the company within the past twelve months, and has received interest income within the past twelve months, although he no longer receives this interest income from the company.

Director Morris recused himself for Item 7-4, due to the fact that his son is a principal at Kennedy Jenks Consultants.

Director Ortega abstained himself for Item 7-4.

52822 Adopt the resolution to continue the Standby Charge for fiscal year 2022/23, as set forth in Agenda Item 7-1 board letter.

52823 Certify the Final Program Environmental Impact Report for the Climate Action Plan and take related CEQA actions; adopt the Climate Action Plan; and authorize an increase of \$1.2 million to an agreement with Rincon Consultants, Inc. for a new not-to-exceed amount of \$2.2 million for Climate Action Plan implementation support, as set forth in Agenda Item 7-2 board letter.

52824 Adopt the CEQA determination that the proposed action was previously addressed in the certified Program Environmental Impact Report and related CEQA actions; award \$18,930,000 contract to Woodcliff Corporation for the La Verne Shops Improvements, Stage 5; and authorize an agreement with Richard Brady & Associates for a not-to-exceed amount of \$650,000, as set forth in Agenda Item 7-3 board letter.

52825 Award a \$3,143,592 contract to Blois Construction, Inc. for electrical upgrades at three Sepulveda Feeder underground structures, as set forth in Agenda Item 7-4 board letter.

52826 Review and consider Addendum No. 1 to the certified 2015 Final Environmental Impact Report for the Weymouth Plant Improvements; award a \$93,840,000 contract to J. F. Shea Construction, Inc. to rehabilitate Basins Nos. 5-8 and Filter Building No. 2 at the Weymouth plant; and authorize with Carollo Engineers, Inc. for a new not-to-exceed total of \$495,000 to provide engineering support, as set forth in Agenda Item 7-5 board letter.

52827 Award \$2,654,000 contract to MMC Inc. for construction of the OC-88 Pump Station Chiller Replacement project, as set forth in Agenda Item 7-6 board letter.

52828 Review and consider Addendum No. 5 to the 2017 Programmatic Environmental Impact Report, and award an \$111,884,7000 contract to J.F. Shea Construction, Inc. to procure materials and perform construction for the rehabilitation of portions of the Second Lower Feeder, as set forth in Agenda Item 7-7 board letter.

52829 Authorize granting a five-year license agreement to West Air Gases and Equipment, Inc. for employee vehicle parking, as set forth in Agenda Item 7-8 board letter.

52830 Authorize the General Manager to update the landlord termination without cause provision by extending the written notice to three years for leases with Coxco, LLC and HayDay Farms Venture, LLC, as set forth in Agenda Item 7-10 board letter.

52831 Express support for developing the VAs approach as an alternative in the Water Board's Bay-Delta Water Quality Control Plan Update, as set forth in Agenda Item 7-9 board letter.

52832 Authorize the General Manager to exercise discretion under Administrative Code Section 6101(k) to enter into a successor Memorandum of Understanding with The American Federation of State, County and Municipal Employees, Local 1902, as set forth in Agenda Item 7-11 board letter.

52833 Approve appointment of John Tonsick as Interim General Auditor, and authorize the Chairwoman of the Board to execute an agreement for employment consistent with the terms and conditions outlined in the board letter, as set forth in Agenda Item 7-12 board letter.

Chairwoman Gray called for a vote to approve the Consent Calendar Items 6A, 6B, 7-1 through 7-10 and 7-12 **(M.I. 52818 through 52819; 52822 through 52831, and 52833)**.

Director Camacho moved, seconded by Director Ortega that the Board approve the Consent Calendar Items 6A, 6B, 7-1 through 7-10 and 7-12 as follows:

Director Blois recused himself for Item 7-4, due to his landlord-tenant relationship with Blois Construction and has received rental income from the company within the past twelve months, although he no longer receives this interest income from the company.

Director Morris recused himself for Item 7-4, due to his son is the principal at Kennedy Jenks Consultants.

Director Smith recused himself for Item 7-7, due to his ownership in Black & Veatch stock.

Director Ortega abstained himself for Item 7-4, due to a lack of specificity in the explanation during committee.

The following Director asked questions or made comments:

	Director(s)
1.	Camacho
2.	Goldberg
3.	Luna
4.	Miller
5.	Ortega
6.	Repenning
7.	Sutley

Staff responded to the Directors' comments or questions.

The following is a record of the vote:

Record of Vote on Consent Item(s):		6A, 6B, 7-1 through 7-10 and 7-12							
Member Agency	Total Votes	Director	Present	Yes	Yes Vote	No	No Vote	Abstain	Abstain Vote
Anaheim	5277	Faessel	x	x	5277				
Beverly Hills	4056	Pressman	x	x	4056				
Burbank	2666	Ramos	x	x	2666				
Calleguas Municipal Water District	11552	Blois	x	x	11552				
Central Basin Municipal Water District	17051	Apodaca							
		Hawkins	x	x	17051				
			Subtotal:		17051				
Compton	553	McCoy	x	x	553				
Eastern Municipal Water District	9492	Record	x	x	9492				
Foothill Municipal Water District	2131	Atwater	x	x	2131				
Fullerton	2255	Jung	x	x	2255				
Glendale	3622	Kassakhian							
Inland Empire Utilities Agency	13433	Camacho	x	x	13433				
Las Virgenes	2741	Peterson	x	x	2741				
Long Beach	5772	Cordero							
Los Angeles	70689	Sutley	x	x	23563				
		Petersen							
		Quinn							
		Luna	x	x	23563				
		Repenning	x	x	23563				
			Subtotal:		70689				
Municipal Water Dist. of Orange County	57264	Ackerman	x	x	14316				
		Tamaribuchi	x	x	14316				
		Dick	x	x	14316				
		Erdman	x	x	14316				
			Subtotal:		57264				
Pasadena	3522	Kurtz	x	x	3522				
San Diego County Water Authority	58302	Fong-Sakai							
		Goldberg	x	x	19434				
		Miller	x	x	19434				
		Smith	x	x	19434				
			Subtotal:		58302				
San Fernando	224	Ortega	x	x	224				
San Marino	730	Morris	x	x	730				
Santa Ana	3035	Phan							
Santa Monica	4352	Abdo	x	x	4352				
Three Valleys Municipal Water District	7753	De Jesus	x	x	7753				
Torrance	3237	Lefevre	x	x	3237				
Upper San Gabriel Valley Mun. Wat. Dist.	11942	Fellow	x	x	11942				
West Basin Municipal Water District	23608	Williams	x	x	11804				
		Gray	x	x	11804				
			Subtotal:		23608				
Western Municipal Water District	12466	Dennstedt	x	x	12466				
Total	337725				325296				
Present and not voting									
Absent	12429								

The motion to approve the Consent Calendar Items 6A, 6B, 7-1 through 7-10 and 7-12 (**M.I. 52818 through 52819; 52822 through 52831, and 52833**), passed by a vote of 325,296 ayes; 0 noes; 0 abstain; 0 not voting; and 12,429 absent.

***Note: Individual vote tally for Item 6B**

Director Peterson voted No on Item 6B. The motion to approve the Consent Calendar Item 6B passed by a vote of 322,555 ayes; 2,741 noes; 0 abstain; 0 not voting; and 12,429 absent.

***Note: Individual vote tally for Item 7-4**

Director Blois and Morris recused on Item 7-4; Director Ortega abstained on Item 7-4. The motion to approve the Consent Calendar Item 7-4 passed by a vote of 299,357 ayes; 13,433 noes; 224 abstain; 12,282 not voting; and 12,429 absent.

***Note: Individual vote tally for Item 7-7**

Director Smith recused from Item 7-7. The motion to approve the Consent Calendar Item 7-7 passed by a vote of 325,296 ayes; 0 noes; 0 abstain; 0 not voting; and 12,429 absent.

Chairwoman Gray called for a vote to approve Item 7-11 **(M.I. 52832)**.

Director McCoy moved, seconded by Director Ortega that the Board approve the Consent Calendar Item 7-11 as follows:

Record of Vote on Item:	7-11								
Member Agency	Total Votes	Director	Present	Yes	Yes Vote	No	No Vote	Abstain	Abstain Vote
Anaheim	5277	Faessel	x	x	5277				
Beverly Hills	4056	Pressman	x	x	4056				
Burbank	2666	Ramos	x	x	2666				
Calleguas Municipal Water District	11552	Blois	x	x	11552				
Central Basin Municipal Water District	17051	Apodaca							
		Hawkins	x	x	17051				
			Subtotal:		17051				
Compton	553	McCoy	x	x	553				
Eastern Municipal Water District	9492	Record	x	x	9492				
Foothill Municipal Water District	2131	Atwater	x	x	2131				
Fullerton	2255	Jung	x	x	2255				
Glendale	3622	Kassakhian							
Inland Empire Utilities Agency	13433	Camacho	x	x	13433				
Las Virgenes	2741	Peterson	x	x	2741				
Long Beach	5772	Cordero							
Los Angeles	70689	Sutley	x	x	23563				
		Petersen							
		Quinn							
		Luna	x	x	23563				
		Repenning	x	x	23563				
			Subtotal:		70689				
Municipal Water Dist. of Orange County	57264	Ackerman	x	x	14316				
		Tamaribuchi	x	x	14316				
		Dick	x	x	14316				
		Erdman	x	x	14316				
			Subtotal:		57264				
Pasadena	3522	Kurtz	x	x	3522				
San Diego County Water Authority	58302	Fong-Sakai							
		Goldberg	x	x	19434				
		Miller	x	x	19434				
		Smith	x	x	19434				
			Subtotal:		58302				
San Fernando	224	Ortega	x	x	224				
San Marino	730	Morris	x	x	730				
Santa Ana	3035	Phan							
Santa Monica	4352	Abdo	x	x	4352				
Three Valleys Municipal Water District	7753	De Jesus	x	x	7753				
Torrance	3237	Lefevre	x	x	3237				
Upper San Gabriel Valley Mun. Wat. Dist.	11942	Fellow	x	x	11942				
West Basin Municipal Water District	23608	Williams	x	x	11804				
		Gray	x	x	11804				
			Subtotal:		23608				
Western Municipal Water District	12466	Dennstedt	x	x	12466				
Total	337725				325296				
Present and not voting									
Absent	12429								

The motion to approve Item 7-11 passed by a vote of 325,296 ayes; 0 noes; 0 abstain; 0 not voting; and 12,429 absent.

Diane Pitman, Group Manager, Human Resources announced that Item 7-11 was a confidential letter that will be added to the official record based on the approval. A summary of the terms of the approved Memorandum of Understanding for the record was given.

The terms are:

A new three-year Memorandum of Understanding between the Metropolitan Water District and The American Federation of State, County, and Municipal Employees, Local 1902. The term of the new agreement with The American Federation of State, County and Municipal Employees, Local 1902 will run through December 31, 2024.

Three cost-of-living-adjustments of 3% each, occurring on July 1, 2022; July 1, 2023; and July 1, 2024.

The parties also agreed to observe Juneteenth as a new District paid holiday. Juneteenth will be observed each year on June 19th, or the next scheduled workday in those years that June 19th falls on a weekend. Administrative Code revisions will be presented to the Board in June so that all other employees can also observe the Juneteenth holiday.

Finally, the parties will re-open negotiations on a select number of contract issues later in 2022, and again in 2023. These will include Recruitment, District Housing, and Teleworking policies. During the re-opener talks, employees in the bargaining unit will remain under contract, and all other terms and conditions of the Memorandum of Understanding shall remain in place.

52834 Chairwoman Gray stated there were no Other Items - Action.

52835 Chairwoman Gray asked if there were questions or need for discussion for Board Information Item 9-1. No requests were made.

52836 Chairwoman Gray asked if there were questions or need for discussion for Board Information Item 9-2. No requests were made.

52837 Chairwoman Gray asked if there were any Other Matters. No requests were made.

52838 Chairwoman Gray asked if there were any Follow-up Items.

Director Peterson announced that on May 18, 2022, there will be an inspection trip of existing and planned enhancements to the Metropolitan Water District Infrastructure to move more Colorado River Supplies further West.

52839 Chairwoman Gray asked if there were any future agenda items.

Director Goldberg requested that the letter from Director Ortega and herself dated May 9, 2022, addressed to Chairwoman Gray regarding the April 2022 State Audit Report be added to the record.

The following Directors asked questions or made comments:

Director(s)	
1.	Ortega
2.	Repenning
3.	Camacho
4.	Pressman
5.	Record
6.	Peterson
7.	Dick
8.	Ramos
9.	Goldberg
10.	Kurtz
11.	Ackerman

Staff and Chairwoman Gray responded to the Directors' comments or questions.

Chairwoman Gray called for a vote to approve the Future Agenda Item **(M.I. 52839)**.

Director Goldberg made a motion, seconded by Director Ortega as follows:

1. Suspension of the new Administrative Code procedures, including Section 2416(f)(5), relating to the establishment of board and ad hoc committees to review complaints against directors and management.
2. Assigning these ethics complaints to the Ethics Officer for review and determination, including providing the funds necessary to retain independent legal counsel.
3. Immediate termination of the General Counsel's involvement in these or any ethics process or investigation of directors or management.
4. Performance review of the General Counsel in consideration of the state audit report findings.
5. Consider waiver of privilege on the two 2017 investigations referenced by the State Auditor.

Director Record moved, seconded by Director Ramos that the Board approve the Substitute Motion as follows:

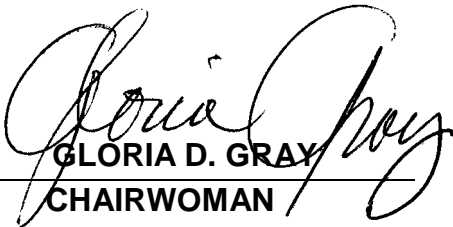
- that the Executive Committee take up the issues brought forth by Director Goldberg for

- appropriate scheduling, placing on the agenda, and to appropriately agendize these issues
- where it needs to be;
- that the Executive Committee meet after the Audit and Ethics Committee;
- that the part with the review of the General Counsel would not be done per Director Miller's comments; and
- that it shouldn't be set for a special board meeting.

Record of Vote on Item:		Future Agenda Item Review Items at Executive Committee							
Member Agency	Total Votes	Director	Present	Yes	Yes Vote	No	No Vote	Abstain	Abstain Vote
Anaheim	5277	Faessel							
Beverly Hills	4056	Pressman	x	x	4056				
Burbank	2666	Ramos	x	x	2666				
Calleguas Municipal Water District	11552	Blois	x	x	11552				
Central Basin Municipal Water District	17051	Apodaca							
		Hawkins	x	x	17051				
			Subtotal:		17051				
Compton	553	McCoy	x	x	553				
Eastern Municipal Water District	9492	Record	x	x	9492				
Foothill Municipal Water District	2131	Atwater							
Fullerton	2255	Jung	x	x	2255				
Glendale	3622	Kassakhian							
Inland Empire Utilities Agency	13433	Camacho	x			x	13433		
Las Virgenes	2741	Peterson	x	x	2741				
Long Beach	5772	Cordero							
Los Angeles	70689	Sutley							
		Petersen							
		Quinn							
		Luna	x			x	35345		
		Repenning	x			x	35345		
			Subtotal:				70689		
Municipal Water Dist. of Orange County	57264	Ackerman	x	x	14316				
		Tamaribuch	x	x	14316				
		Dick	x	x	14316				
		Erdman	x	x	14316				
			Subtotal:		57264				
Pasadena	3522	Kurtz	x	x	3522				
San Diego County Water Authority	58302	Fong-Sakai							
		Goldberg	x			x	19434		
		Miller	x			x	19434		
		Smith	x			x	19434		
			Subtotal:				58302		
San Fernando	224	Ortega	x			x	224		
San Marino	730	Morris	x	x	730				
Santa Ana	3035	Phan							
Santa Monica	4352	Abdo	x			x	4352		
Three Valleys Municipal Water District	7753	De Jesus	x	x	7753				
Torrance	3237	Lefevre	x	x	3237				
Upper San Gabriel Valley Mun. Wat. Dist.	11942	Fellow	x	x	11942				
West Basin Municipal Water District	23608	Williams	x	x	11804				
		Gray	x	x	11804				
			Subtotal:		23608				
Western Municipal Water District	12466	Dennstedt	x	x	12466				
Total	337725				170888		147000		
Present and not voting									
Absent	19837								

The motion to approve Item Future Agenda Item Review Items at Executive Committee passed by a vote of 170,888 ayes; 147,000 noes; 0 abstain; 0 not voting; and 19,837 absent.

52840 There being no objection, at 2:18 PM Chairwoman Gray adjourned the meeting.



GLORIA D. GRAY
CHAIRWOMAN



JUDY ABDO
SECRETARY

MWD Director Gail Goldberg
MWD Director Adan Ortega

May 9, 2022

Chairwoman Gloria Gray
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012
VIA EMAIL

RE: April 2022 State Audit Report
Request for Special Board Meeting to Address State Audit Report Findings and
Agree to Specified Waiver of Privilege as Requested by the State Auditor

Dear Chairwoman Gray,

As you are aware, the State Auditor has completed its report on MWD, finding that, *"Its Leadership Has Failed to Promote Transparency or Ensure a Fair and Equitable Workplace"* ("Audit Report or Report"). Due to the Board's failure to take appropriate action in the past, the Auditor has made several recommendations to the Legislature to make changes in state law, including that the Legislature revoke the Board's authority over key personnel and ethics processes if we again fail to take corrective action (Report Recommendations at p. 5). We're sure you will agree that the Audit Report and recommendations are very serious and place our Board of Directors in an extremely poor light. This is especially so because while the State Audit found *on-going* retaliation, the board has failed to urgently act to demand accountability from senior staff said to be involved.

While our new General Manager has taken and is taking several actions in response to the Audit Report, he does not have any authority over the Ethics Officer or General Counsel, who report to the Board of Directors. The Report is extremely critical of our General Counsel, noting among other things, undisclosed conflicts of interest (see, for example, Audit Report at p. 54) and actions taken to exert improper influence over the work of the ethics office. The Report concludes that the historical problems are "ongoing" (Report at p. 2).

Director Goldberg requested at our April 26 Special Board Meeting that four items be added to the May 10 board agenda:

1. Suspension of the new Administrative Code procedures, including Section 2416(f)(5), relating to the establishment of board and ad hoc committees to review complaints against directors and management;

2. Assignment of these ethics complaints to the Ethics Officer for review and determination, including providing the funds necessary to retain independent legal counsel;
3. Immediate termination of the General Counsel's involvement in these or any ethics process or investigation of directors or management; and
4. Performance review of the General Counsel in consideration of the state Audit Report findings.

Director Goldberg expressly stated that, "I am aware that these issues would ordinarily go through committee, but under the current circumstances, my request is that these issues go directly to the full board of directors."

As you predicted at the meeting, Director Ortega was poised to second Director Goldberg's request. However, rather than proceeding with Director Goldberg's request as a motion, you offered and stated twice that "we will add it to the agenda." See attached excerpt from the Special Board Meeting discussion.

In contravention of this discussion, the requested items are not on the board's May 10 agenda. Instead, you informed Director Goldberg that you now plan to present the first three requests to the Executive Committee for consideration at its May 24 meeting; and, that the General Counsel will be reviewed consistent with the normal schedule and process beginning in June.

Director Goldberg's request was not to suggest "business as usual" timing for the Board's consideration and action. To the contrary, the purpose of her motion was to make clear to the State Auditor that our Board of Directors does take these issues seriously and is prepared to take immediate action to begin to improve and correct the situation.

The first three requests are clearly "low-hanging fruit" from the Audit Report,¹ which concludes that our Ethics Office "remains out of compliance with state law, including the requirement that the office independently investigate allegations of ethics violations" (Audit Report, p. 51), and is "subject to political influence" by our Board of Directors, management and the General Counsel (Audit Report, p. 52 and 57-59). Our hope is to demonstrate by these actions that the State Auditor is wrong when it says that our Board, "does not respect or, at best, misunderstands the role and legal requirements of its ethics office" and is unwilling to make real change" (Audit Report at p. 59).

¹ The first three requests would immediately implement three of the recommendations the State Auditor has made to the Legislature, namely: 1)" establish MWD's ethics officer as the sole authority for interpreting MWD's ethics rules when conducting investigations into alleged ethics violations"; 2) "grant MWD's ethics officer the authority to contract with outside legal counsel for the purpose of receiving independent legal advice"; and, 3)"prohibit any employee within MWD, including board members, from interfering in any way in an investigation" (Report at p. 5).

Chairwoman Gray

May 9, 2022

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While many of the findings in the Audit Report relating to our General Counsel can await the expedited performance review as requested, one issue that we ask to be addressed now by the Board is agreement to waive attorney-client privilege² so that Board members can obtain more information about the two cases that occurred in 2017 involving the General Counsel. The Board was never informed of the request of the State Auditor to waive privilege; instead, the General Counsel unilaterally refused to waive privilege, even though she had a conflict of interest in doing so in order to protect her own position which was under scrutiny and criticism by the State Auditor. Our own Board of Directors does not have the information the State Auditor has about these events but was unable to describe due to the General Counsel's refusal to waive privilege.³

We plan to make and second a motion at the Tuesday Board meeting that these items be placed on a Special Board Meeting agenda for May 24.

Sincerely,



Director Gail Goldberg



Director Adan Ortega

Attachment: April 26, 2022 Special Board Meeting Transcript Excerpt

cc: MWD Board of Directors
State Auditor

² The Board should be willing to waive its privilege as related to the General Counsel, who is a direct report to the Board, while at the same time preserving privilege as to any employees who are not direct reports. Even if the State Auditor does not make further findings based on the waiver of privilege, it should be able to provide the MWD Board of Directors access to information it has which the General Counsel has not made available to the Board of Directors.

³ The Board should be able to obtain this information directly from the Ethics Office but under current Administrative Code provisions, he is required to "collaborate" with the General Counsel before releasing any information to the Board of Directors.

**Metropolitan Water District of Southern California
Special Board Meeting
April 26, 2022¹**

Future agenda items

Gray: Thank you. All right, no follow-up items. Future agenda items, please raise your hand. Director Goldberg.

Goldberg: Thank you very much, Chair Gray. I think the topic of today's meeting is a really excellent example of the important and critical work that we do, and its impact on our member agencies and our ratepayers. I think it serves as a reminder to all of us of why MWD needs to perform at the very highest level in every area of our responsibility. As discussed at today's OP&T and executive committees, I think it is essential that we take meaningful action in response to the state audit report, in order to fulfill our fiduciary responsibilities to the public and to this agency.

I know that there were earlier requests for items on this issue to be placed on committee, but since I heard no commitments, I'm going to ask that the following four items be placed on the main board agenda. Number one, suspension of the new administrative code procedures, including Section 2416 F5, relating to the establishment of board and ad hoc committees to review complaints against directors and management. Two, assignment of these ethics complaints to the ethics officer for review and determination, including providing the funds necessary to retain independent legal counsel.

Number three, immediate termination of the general counsel's involvement in these or any ethics process or investigation of directors or management. Finally, a performance review of the general counsel in consideration of the state audit report findings. I am aware that these issues would ordinarily go through committee, but under the current circumstances, my request is that these issues go directly to the full board of directors. Thank you.

Gray: Thank you, Director Goldberg. I know Director Ortega wants to speak, but I think he may say the same thing. What I think we should do is just add it to the agenda. I will let Director Ortega speak.

Ortega: No, thank you. Chairwoman Gray. I was just going to second Director Goldberg. Thank you for doing that. Appreciate it.

Gray: I assume that's no objection to that, so I'll just make that statement. We will add it to the agenda.

¹ https://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=9620

ORGANIZATION, PERSONNEL AND TECHNOLOGY
COMMITTEE MEETING

May 9, 2022 – 11:00 a.m.

MWD Headquarters Building – Teleconference Meeting

NON-INTEREST DISCLOSURE NOTICE
COMMITTEE ITEM 7-11

COMMITTEE ITEM 7-11 – Approve entering into 2022-2024 Memorandum of Understanding between The Metropolitan Water District of Southern California and The American Federation of State, County and Municipal Employees, Local 1902; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with Labor Negotiators; to be heard in closed session pursuant to Gov. Code 54957.6. Metropolitan representatives: Diane Pitman, Human Resources Group Manager, Stephen Lem, HR Section Manager of Labor Relations. Employee organizations: The American Federation of State, County and Municipal Employees. (AFSCME), Local 1902].

This Non-Interest Disclosure Notice is being provided under the California Government Code: Pursuant to Government Code Section 1091.5(a)(9), a District officer or employee does not have a financial interest in a District contract if these conditions are satisfied: (i) his or her interest is that of a person receiving a salary, per diem or reimbursement for expenses from a government entity; (ii) the contract does not directly involve the department of the government entity that employs him or her; and (iii) the interest is disclosed to his or her body or board at the time the contract is considered and is noted in its official record. In accordance with this statute, the following District officers or employees have been, or may be, involved in the bargaining unit negotiations on behalf of management: Adel Hagekhalil, Marcia Scully, Abel Salinas, Katano Kasaine, Heather Beatty, Shane Chapman, Deven Upadhyay, Stephen Lem, Diane Pitman, Henry Torres, Tony Zepeda, Michelle Haight, Brent Yamasaki, Charlie Eckstrom, Dee Zinke, and Isamar Munoz.

Heather Beatty and Isamar Munoz are members of the Association of Confidential Employees (“ACE”), which has a salary provision in its Memorandum of Understanding that allows ACE to select an annual salary adjustment from any one of the Memoranda of Understanding for the other bargaining units. Each of the remaining individuals is unrepresented. Under Administrative Code Section 6500(d), unless the Board directs otherwise, the pay rate range for each unrepresented individual except Adel Hagekhalil, Marcia Scully and Abel Salinas will be adjusted annually to correspond with the annual across-the-board salary adjustment provided to the District’s management employees under the Memoranda of Understanding; although actual pay rates for these unrepresented individuals will be determined by their management. The other compensation and benefits for which the unrepresented individuals are eligible are set forth in the Administrative Code.