THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Audit and Ethics Committee

8/16/2022 Board Meeting

7-8

Subject

Approve proposed ethics-related amendments to the Administrative Code; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

On April 21, 2022, the California State Auditor issued a report of findings and recommendations as a result of a wide-ranging audit of Metropolitan's processes and procedures, including those within the Ethics Office. The State Auditor established an October 2022 deadline for addressing recommendations in the audit report. In May 2022, the Ethics Office presented the audit findings and recommendations, and a plan to address the audit report's ethics-related recommendations, to the Audit and Ethics Committee.

In June 2022, the Ethics Office presented preliminary draft amendments to the Administrative Code for the Committee's feedback. In July 2022, the Ethics Office updated its proposed amendments to the Administrative Code and distributed the proposal to the bargaining units for review. The current proposal was finalized with consideration of director, management, and bargaining unit feedback.

This action requests approval of amendments to the Administrative Code. Approval would address the State Auditor's recommendations, meet the Auditor's established deadline, and enhance Metropolitan's Ethics Office.

Details

Background

In 2021, the California State Legislature directed California's State Auditor (Auditor) to review various Metropolitan policies and practices, including those related to Metropolitan's Ethics Office. In 2004, the Auditor reviewed several of the same Metropolitan policies and practices, the findings of which are detailed in their 2004 audit report. Among other findings, the 2004 audit concluded that Metropolitan "failed to operate an independent ethics office as required by state law." The Auditor made several recommendations for establishing an ethics office that complies with state law.

The Ethics Officer accepts the Auditor's findings and supports their recommendations. In its response to the state audit report, Metropolitan stated that it agreed with the recommendations in the report and plans to implement them.

Ethics-Related State Audit Findings and Recommendations

The complete 2022 California State Audit report, which details the bases for the Auditor's findings and recommendations, is provided in **Attachment 1**. In summary, the Auditor concluded in their 2022 report that despite agreeing to implement the 2004 ethics-related audit recommendations, Metropolitan remained out of compliance with state law. The Auditor's broad findings related to the Ethics Office were that:

- *Metropolitan has failed to establish an independent ethics office.*
- *Metropolitan's Ethics Office does not comply with state law or align with best practices.*
- *Metropolitan management inappropriately interfered in the Ethics Office's work on two important cases.*
- *Metropolitan appears unwilling to strengthen its Ethics Office.*

The Auditor explained the basis for their findings and made several ethics-related recommendations in the report, provided in **Attachment 1**, including new state legislation and amendments to Metropolitan's Administrative Code. First, the Auditor recommended that the state legislature amend state law to address certain Metropolitan processes related to the Ethics Office:

> *To ensure that Metropolitan's ethics officer has the authority to independently investigate allegations of ethics violations, the Legislature should amend the requirements in existing state law to include the following:*
>
> - *Establish Metropolitan's ethics officer as the sole authority for interpreting Metropolitan's ethics rules when conducting investigations into alleged ethics violations.*
> - *Grant Metropolitan's ethics officer the authority to contract with outside legal counsel for the purpose of receiving independent legal advice.*
> - *Require any employee within Metropolitan, including board members, to provide to the ethics officer any documents requested as part of an ongoing investigation without waiving any privileges that may apply.*
> - *Prohibit any employee within Metropolitan, including board members, from interfering in any way in an investigation.*

The Auditor also recommended amendments to Metropolitan's Administrative Code. That recommendation is the subject of this letter and proposed action. Specifically, the Auditor recommended:

> *To ensure that its ethics office is independent, as required by state law, by October 2022 Metropolitan should revise its Administrative Code to:*
>
> - *Prohibit interested parties from participating in the office's investigation process, except when necessary to provide information or otherwise respond to allegations.*
> - *Establish the best practices highlighted in the audit report [See **Attachment 1** for the report] for protecting the independence of the ethics office, such as ensuring that the ethics officer has sole authority to interpret Metropolitan's ethics rules and that the ethics office can obtain advice from outside legal counsel.*

The Auditor made additional ethics-related findings not covered by this letter, such as the need for "safety training specifically on retaliation." The Ethics Office is collaborating with appropriate Metropolitan safety staff to coordinate safety-related retaliation training. Based on the Auditor's concern that Metropolitan's safety policies do not explain where employees should report retaliation, Ethics Office staff also coordinated with management to supplement internal safety policies with information on filing retaliation complaints through the Ethics Office.

Methodology for Addressing State Audit Recommendations

The California State Auditor set an October 2022 deadline for Metropolitan to address its ethics-related recommendations. Given the short timeframe, the Ethics Office immediately began efforts to independently address the report's ethics-related recommendations. Staff first reviewed the state audit report and extracted all Ethics Office-related comments, findings, and recommendations. Staff then reviewed Metropolitan's Administrative Code, identifying any language or provision that involved or was potentially inconsistent with, or contrary to, the audit findings, comments, and recommendations. Staff then began considering revisions to, and developing proposed language for, the Administrative Code based on this review and evaluation.

Feedback

While the Ethics Office independently developed a plan for addressing ethics-related recommendations from the state audit report, it solicited and considered feedback during policy development. In May 2022, the Ethics Office presented the state audit findings and recommendations, and its plan to address the audit report's ethics-related recommendations, to the Audit and Ethics Committee. In June 2022, the Ethics Office presented preliminary draft revisions to the Administrative Code for the Committee's feedback. In July 2022, the Ethics Office updated its proposed amendments to the Administrative Code and distributed the proposal to the bargaining units and

management for review and comment. The proposal submitted by the Ethics Office was finalized with consideration of director, management, and bargaining unit feedback.

Proposed Ethics-Related Amendments to the Administrative Code

In response to the Auditor's recommendations, and staff's review of the Administrative Code, the Ethics Office is proposing several amendments to the Administrative Code, as summarized below. The proposal addresses the Auditor's recommendation that Metropolitan ensure the Ethics Office's independence through the Administrative Code, specifically by restricting interested parties' participation in Ethics Office investigations and establishing the best practices highlighted in the Auditor's report. The proposal also addresses the Auditor's concern that Metropolitan does not define "retaliation" in safety-related retaliation policies by adding definitions and examples to Metropolitan's retaliation policy.

Some of the proposed revisions are not specifically called for in the state audit report. However, in the Ethics Office's view, these additional proposed changes are in the spirit of the Auditor's recommendations, generally enhance and preserve the Ethics Office's independence, and are in line with the best practices the Auditor recommended.

Further, although the ability to adopt new state legislation is not within the Ethics Office's control, the proposal incorporates the provisions the Auditor recommended the state legislature enact. **Attachment 2** provides redlined text of the recommended amendments compared to the current Administrative Code language.

The Ethics Office's proposed revisions to the Administrative Code are summarized below:

1. Sole Authority to Interpret Ethics Rules

Existing: Current Code language does not expressly state that the Ethics Officer has sole authority to interpret ethics rules.

Proposal: Based on the Auditor's recommendation, adds a new provision expressly establishing that the "Ethics Officer shall have sole authority to interpret Metropolitan's ethics rules." (Section 6470(d). The proposed language does not eliminate or limit the Ethics Officer's authority to obtain internal or external legal advice or feedback on ethics rules.

2. Access to Information, Records, and Other Resources Without Waiving Privileges

Existing: Division VI of the current Code, which speaks to the Ethics Officer's powers and duties, is silent on their ability to access information, records, and other resources. A prior version of the Code included a provision on the Ethics Officer's ability to access records. The Code's section on the General Auditor's powers and duties includes a provision on their ability to access records.

Division VII's section on investigation procedures references the Ethics Officer's ability to obtain records. However, it provides that the Board would resolve any differences between the Ethics Officer and General Counsel about access to information protected by the attorney-client privilege, and an ad hoc committee would resolve disagreements about access to records not involving the attorney-client privilege, after a joint presentation by the Ethics Officer and the General Counsel. The process as currently written presumes that providing privileged documents to the Ethics Officer for the purposes of an ethics complaint or investigation waives the privilege. (Section 7413).

Proposal: Based on the Auditor's recommendation, adds new provision in Division VI clarifying that the Ethics Officer shall have the authority to obtain unrestricted access to information, documents, records, and other information as part of an Ethics Office complaint or investigation. Further, based on the Auditor's recommendation, the provision expressly states that providing information to the Ethics Officer does not waive any privileges that may apply. (See new Section 6470(j)).

Staff also proposes to amend the process for waiving of the privilege should the Ethics Officer determine waiver is necessary. This proposed change would correct the prior assumption that providing privileged information to the Ethics Officer waives the privilege. Further, it would place responsibility on the Ethics Officer to present to the Board their request to waive the privilege and their basis for the request. Although the requirement of a joint presentation with the General Counsel would be removed from

Section 7413, it is assumed that the General Counsel would serve its role as legal advisor to the Board during and/or in connection with any Ethics Officer's request to waive the privilege.

3. Authority to Obtain Independent Legal Counsel

Existing: Current Code is silent on whether the Ethics Officer may obtain independent legal counsel.

Proposal: Based on the Auditor's recommendation, proposes to add express authority for Ethics Officer to obtain independent legal counsel. The amount to be expended under any one contract is limited to $100,000 unless approved by the Board. (See new Section 6471(a)).

Existing: Current Code states that the Ethics Officer may consult with the General Counsel "regarding any investigation" at the Ethics Officer's discretion. (Section 7407).

Proposal: Based on the Auditor's concern about obtaining internal legal advice on Ethics Office investigations, and the recommendation that the Ethics Officer be given authority to obtain independent legal counsel, the proposal retains language that the Ethics Officer may consult with the General Counsel at the Ethics Officer's discretion but removes "regarding any investigation." (Section 7407).

Existing: Current Code requires that the Ethics Officer provide a copy of their investigation findings report and notify the General Counsel when the Ethics Officer finds no ethics violation after investigation. (Section 7416).

Proposal: Based on the Auditor's recommendation for the Ethics Office's authority to obtain independent counsel, the proposal eliminates the requirement to provide the General Counsel with ethics investigation findings. However, the Auditor also noted the value of a legal review of investigations. Currently, an Ethics Office attorney on staff reviews investigation reports and anticipates obtaining additional independent legal review in some cases from outside counsel, for example, in matters involving gray areas in the law. (Section 7416).

4. Enhancements to Policy on Retaliation, Whistleblower, and Witness Protections

Existing: The current Code generally prohibits actions taken as a reprisal for good faith reporting of potential violations of workplace policies or laws, including safety-related policies or laws. (Section 7128)

Proposal: Based on the Auditor's recommendation, the proposal adds a definition of retaliation to Metropolitan's retaliation policy and clarifying language and heading. Staff also proposes to further enhance the retaliation policy by: including protections for reporting in good faith "workplace safety concerns" which may or may not yet be captured by a policy or law; adding examples of the types of adverse employment actions that could amount to retaliation when there is a nexus to a protected activity; and expanding protections for reporting public health or safety dangers by eliminating the limiting term "gross" – any good faith reporting of public health or safety dangers, whether the degree of danger is "gross" or less severe than "gross," would be covered. (Section 7128).

5. Cooperation with, and Independence of, Ethics Office Investigations

Existing: Current Code requires Metropolitan officials and others to cooperate with Ethics Office investigations and provides some examples of failure to cooperate. (Section 7129).

Proposal: Based on the Auditor's recommendations, the proposal adds a provision (1) prohibiting interference with Ethics Office complaints and investigations, (2) prohibiting participation with Ethics Office complaints or investigations except when necessary to provide information or otherwise response to allegations, and (3) requiring officials to provide to the Ethics Officer documents and other information in connection with an Ethics Officer complaint or investigation. The proposal also adds "refusing to provide documents or information" as an example of a failure to cooperate with an ethics investigation. (Section 7129).

Existing: Current Code gives the Ethics Officer authority to confer with the Board Chair and Audit and Ethics Committee Chair, and Vice Chair on investigations for the purpose of seeking advice and feedback on investigative matters. (Sections 6470(i); 7412(e)).

Proposal: Based on the Auditor's concerns about the independence of ethics investigations, the proposed language clarifies that Ethics Officer's authority to confer with Board Chair and Audit and Ethics Committee Chair and Vice Chair on investigative matters is only for purposes of feedback, as opposed to advice. Based on the Auditor's recommendations, it also clarifies that the prohibition on interference with ethics investigations applies to any such communications (Sections 6470(i); 7412(e)).

6. Collaboration Mandate for the Ethics Officer

Existing: In 2018, the Administrative Code was amended to add a general requirement that the Ethics Officer "maintain a collaborative relationship with the Board, General Manager, General Counsel, and General Auditor." The Code did not add the same requirement for the other named parties, leaving the sole responsibility on the Ethics Officer. (Section 6470(d)).

Proposed: Based on the Auditor's concern over this collaboration requirement and its potential impact on ethics investigations, staff proposes that it be eliminated. The Auditor noted that "…unlike requirements of other equivalent officer-level positions, Metropolitan's Administrative Code directs the ethics officer to work in a *collaborative manner* with the board and other officers. This ambiguity regarding the ethics officer's authority threatens the officer's ability to reach independent determinations on potential rule violations, particularly in instances involving high-ranking employees or board members."

Staff is further concerned that the Code requires the Ethics Officer to carry the sole responsibility for maintaining a collaborative relationship with the listed parties with respect to investigative work and all other office mandates. As stated in meetings of the Audit and Ethics Committee, the Ethics Officer has collaborated and will continue to collaborate with the aforementioned parties, as well as others, where appropriate, where the independence of the Ethics Office is not jeopardized, and where parties are also willing to collaborate with the Ethics Officer.

Existing: In 2018, the Administrative Code was amended to add a general requirement that the Ethics Officer annually confirm to the Board the organizational independence of the Ethics Office and the Ethics Officer's collaborative relationship with the Board, General Manager, General Counsel, and General Auditor. (Section 6472).

Proposal: Based on the Auditor's concern (noted above) about the collaboration requirement, and staff's additional concerns, the proposal eliminates the requirement that the Ethics Officer annually confirm collaborative relationships to the Board. As noted above, the Ethics Officer will continue to collaborate where appropriate and in ways that do not jeopardize the Office's independence.

The proposal further eliminates the requirement that the Ethics Officer annually confirm the independence of the Ethics Office. In staff's view, the proposed substantive changes are a more effective way to enhance the Office's independence. The Ethics Officer will communicate with the Audit and Ethics Committee about any concerns involving organizational independence as needed.

7. Audit and Ethics Committee Powers and Duties: Evaluation and Oversight of the Ethics Officer

Existing: The current Code requires that the Audit and Ethics Committee ensure that the Ethics Officer is working in a collaborative manner with the Board and other Department Heads. (Section 2496(b)(2)).

Proposal: Based on the Auditor's concern about the Code's collaboration requirement, and that it is only imposed on the Ethics Officer, the proposal eliminates the Audit and Ethics Committee's requirement to ensure that the Ethics Officer is working in a collaborative manner with the Board and Department Heads.

Existing: The current Code requires the Audit and Ethics Committee to resolve issues between the Ethics Officer and Department Heads regarding Ethics Office requests for documents and information maintained by the Department Heads. (Section 2496(b)(2)).

Proposal: Based on the Auditor's recommendation about the Ethics Officer's access to records, the proposal eliminates the Audit and Ethics Committee's role in resolving issues between the Ethics Officer and other Department Heads regarding requests for information maintained by the Department Heads.

Existing: Currently, the Code sets forth differing evaluation processes for the Audit and Ethics Committee in its evaluation of the Ethics Officer as compared to the General Auditor. (Section 2496(b)(1)).

Proposal: Based on staff's review of the Administrative Code, the proposal adopts the same evaluation process for the Ethics Officer that the Audit and Ethics Committee uses to evaluate General Auditor.

8. Closed Meeting Procedures

Existing: Current Code language states that the General Counsel and General Manager, and when appropriate, the General Auditor, are responsible for designating staff and others who will remain in closed session meetings to assist the Board in its deliberations. (Section 2105(a)).

Proposal: Based on its review of the Administrative Code, staff noted that the Ethics Officer was the only Department Head without any level of authority to designate staff or others to participate in closed session items. Staff proposes that the Ethics Officer have the same level of authority granted to the General Auditor, which is the authority to, when appropriate, designate staff to remain in closed session. (Section 2105(a)).

Additional Proposed Amendments to the Administrative Code

During its review of the Auditor's ethics-related recommendations, Ethics Office staff discovered additional, minor areas for amendment. All proposed changes are included in **Attachment 2**.

Proposed changes include:

- Correction of chapter headings and re-numbering.
- Clarifying language that the General Manager's powers are only limited by powers specifically reserved to the General Counsel and General Auditor (proposing to add the Ethics Officer) (see Section 6410).
- Deletion of unnecessary or confusing terms.
- Clarifying language (e.g., Sections 6470(c); 6471(b); and 7122(a)).
- Clarifying that the requirement that legal analysis is only required in Ethics Officer reports when necessary (i.e., when the policy at issue involves application of a law).
- Changing the timing of investigation status reports to the Audit and Ethics Committee to "bi-monthly" for consistency throughout various Code sections. (Sections 2496(b)(3); 6470(g); and 6472(b)).

Summary

This action authorizes ethics-related amendments to the Administrative Code which address the Auditor's recommendations, include additional amendments proposed by the Ethics Officer consistent with the spirit of the Auditor's recommendations, and address other minor proposed revisions for improved clarity and consistency. See **Attachment 1** for the California State Audit Report and **Attachment 2** for the redlined text of the recommended amendments as compared to the current Administrative Code language.

Project Milestone

October 2022 – Deadline for addressing California State Auditor's ethics-related recommendations.

Policy

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

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not subject to CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to 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 recommended ethics-related amendments to the Administrative Code.

Fiscal Impact: None
Business Analysis: This option will address the California State Auditor's ethics-related recommendations within the proscribed deadline and other proposed amendments to enhance Metropolitan's Ethics Office.

Option #2

Do not approve recommended ethics-related amendments to the Administrative Code.
Fiscal Impact: None
Business Analysis: This option may forego the opportunity to meet the California State Auditor's deadline for reforms and will delay additional enhancements of Metropolitan's Ethics Office.

Staff Recommendation

Option #1



8/2/2022
Abel Salinas *Date*
Ethics Officer

Attachment 1 – California State Audit Report

Attachment 2 – Redline Version, Proposed Administrative Code Amendments

Ref# e12684126

Metropolitan Water District of Southern California

Its Leadership Has Failed to Promote Transparency or Ensure a Fair and Equitable Workplace

April 2022

REPORT 2021-104



CALIFORNIA STATE AUDITOR
621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814

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Michael S. Tilden *Acting State Auditor*

April 21, 2022
2021-104

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The Metropolitan Water District of Southern California (MWD) has repeatedly been the subject of allegations of discrimination and harassment in the workplace, and it has failed to comply with state ethics laws and best practices in hiring and personnel matters. Despite clear evidence that its processes are insufficient to detect and prevent conduct that harms its 1,800 employees, MWD has long resisted taking action.

MWD has not dedicated sufficient attention or resources to its equal employment opportunity (EEO) policy or its EEO office, which is responsible for receiving, investigating, and resolving EEO complaints. In some cases we reviewed, it took MWD years to conclude investigations and discipline respondents. During these long delays, complainants may continue to suffer harassment and retaliation, and MWD lacks processes to detect and address the negative treatment of complainants that we observed.

For nearly two decades, MWD's hiring processes have also been problematic: they fail to ensure equitable and reasonable treatment of all applicants, lack transparency, and are unable to prevent discrimination. Although MWD agreed to develop comprehensive hiring procedures nearly 20 years ago in response to our 2004 audit, its hiring process remains decentralized and informal, resulting in inconsistent treatment of applicants. Similarly, the agency's longtime resistance to improving its ethics office has allowed management to interfere with the office's independent investigations.

Because MWD's leadership must fundamentally change the way it approaches many personnel and ethics issues, and because MWD has failed to take appropriate action in the past, we direct several of our recommendations to the Legislature to better ensure that MWD finally improves its practices.

Respectfully submitted,

MICHAEL S. TILDEN, CPA
Acting California State Auditor

Selected Abbreviations Used in This Report

DEI	Diversity, Equity, and Inclusion
DFEH	Department of Fair Employment and Housing
EEO	equal employment opportunity
EEOC	U.S. Equal Employment Opportunity Commission
HAZWOPER	hazardous waste operations and emergency response
IIPP	Injury and Illness Prevention Program
MTA	Los Angeles County Metropolitan Transportation Authority
MWD	Metropolitan Water District of Southern California
NDA	nondisclosure agreement
NDP	nondiscrimination program
OSHA	Occupational Safety and Health Administration
PPE	personal protective equipment
SRS	Operational Safety and Regulatory Services
WSO	Water System Operations

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Summary

Results in Brief

As the largest distributor of treated drinking water in the United States, the Metropolitan Water District of Southern California (MWD) delivers water to 19 million Californians through its agreements with 26 member agencies. MWD is governed by a 38-member board of directors, with each board member representing one of the district's 26 agencies. MWD employs more than 1,800 full-time employees and operates a series of pumping plants, canals, siphons, and pipelines to bring water 242 miles from the Colorado River to Southern California. Because some of these facilities operate 24 hours per day for much of the year and are located more than 50 miles from the nearest town or residential area, MWD owns about 100 houses located at those facilities and requires key staff to reside there while on duty.

Despite MWD's critical mission and its significant financial resources, it has failed to devote sufficient time or attention to crucial personnel processes. MWD has long been aware of alleged discrimination and harassment in the workplace, shortcomings in its hiring process, noncompliance with state ethics law, and serious concerns regarding employee housing. However, MWD has repeatedly shown an unwillingness to take real corrective action on these issues or to embrace transparency and accountability more generally.

State and federal law prohibit MWD from discriminating against its employees or job applicants on the basis of any protected characteristic, including sex, race, gender identity, and sexual orientation. These protections are commonly referred to as equal employment opportunity (EEO) protections. MWD also has legal obligations to investigate and resolve allegations of discrimination or harassment among its workforce in a timely manner. In 2020, some MWD employees publicly presented allegations that described workplace harassment they had experienced. In some cases, the employees alleged that MWD's management had retaliated against them for filing complaints. In response, MWD contracted with a law firm to review allegations of systemic EEO-related concerns at MWD and to evaluate MWD's policies and processes for handling EEO issues. In July 2021, the law firm published a report that included a number of recommendations intended to strengthen MWD's internal processes and improve its handling of EEO issues.

Our review concludes that MWD's EEO policy and procedures do not align with best practices in key areas. MWD's EEO and sexual harassment policies are out of date, and MWD does not

Audit Highlights . . .

Our audit of MWD's personnel and hiring practices highlighted the following:

- *MWD has not dedicated sufficient attention or resources to its EEO policy or its EEO office, leaving employees subject to dysfunctional and potentially unsafe workplace circumstances for unnecessarily long periods of time.*
- *Despite having known for nearly 20 years that its hiring practices failed to protect applicants from potential discrimination, the procedures remain decentralized and informal.*
  - *MWD's hiring process gives significant discretion to individual hiring managers, lacks transparency, and cannot demonstrate that hiring decisions are equitable.*
  - *MWD's hiring data also show that even recently, MWD has hired qualified female candidates and people of color at significantly lower rates than their male and white counterparts.*
- *MWD's ethics office remains out of compliance with state law, including the requirement that the office independently investigate allegations of ethics violations.*
  - *Our review identified instances in which MWD's management has interfered with the ethics office's independent functions.*
- *MWD has long been aware of serious issues threatening the habitability of its employee housing, but it has not created processes for addressing employee maintenance requests effectively.*
  - *It has also struggled to implement a comprehensive, long-term solution to address significant issues with employee housing.*

provide its EEO investigation procedures to employees as state law requires. Further, MWD has consistently exceeded its own time frames for initiating and completing investigations of EEO complaints, as well as for notifying the parties involved about results of those investigations. In our review of EEO complaints that MWD investigated between 2004 and 2021, we identified instances in which MWD took more than a year to complete investigations that its guidelines indicate should take no more than two or three months. As a result of MWD's delays, employees may continue to work in dysfunctional or potentially unsafe situations for long periods. Because MWD's EEO recordkeeping is inaccurate and incomplete, the total number of EEO complaints that employees at MWD have filed is unknown. However, we identified several EEO complaints that MWD either never investigated or only did so after significant delays.

MWD's poor handling of complaints during and after EEO investigations has led to negative outcomes for some complainants. For example, we found that MWD's disciplinary process in response to substantiated EEO complaints was slow, inconsistent, and potentially unfair. We also determined that MWD has not established sufficient processes to prevent or proactively address potential violations of its retaliation policy. In our review, we observed little evidence that MWD has processes to identify problematic behavior directed toward EEO complainants or that MWD staff are well prepared to intervene effectively when such behavior occurs. MWD's poor handling of recent retaliation investigations demonstrates that MWD's historical failure to protect some complainants is ongoing. MWD's actions demonstrate a failure of leadership and create a perception, at a minimum, that it tolerates harassment, discrimination, and retaliation.

The agreements MWD has entered into with employees to settle EEO issues often include confidentiality provisions. Although we did not evaluate the reasonableness of any individual agreement or its specific provisions, we are concerned that MWD's reliance on confidentiality, along with its inconsistent reporting on EEO-related settlements to its board, has contributed to its failure to address the underlying circumstances of the issues we found.

MWD's demonstrated failure to embrace transparency and accountability extends to its hiring processes. Despite MWD's pledge to improve its hiring practices in response to an audit our office conducted in 2004, we identified some of the same shortcomings nearly two decades later. For example, instead of following best practices, MWD operates a hiring process that gives significant discretion to individual hiring managers without corresponding safeguards to ensure that their decisions are free of favoritism or bias. As a result, MWD is unable to consistently

ensure or demonstrate that its hiring decisions are equitable or reasonable. Similarly, MWD's process for promoting employees gives significant discretion to managers without sufficient accountability, allowing for the appearance of favoritism or bias.

In addition, MWD's hiring process does not sufficiently protect applicants from potential discrimination. MWD removed previous procedures from its hiring process that were designed to prevent discrimination. Moreover, MWD's most recent analyses found that women and people of color are underrepresented among large sections of its workforce. MWD's hiring data also show that even recently, MWD has hired qualified female candidates and people of color at significantly lower rates than their male and white counterparts. However, MWD has failed to meaningfully analyze these data and use them to improve its hiring processes. Through its inaction since our 2004 audit and failure to analyze these data, MWD demonstrates a sustained unwillingness to develop and implement a hiring process that ensures fairness for all employees and applicants.

MWD has also shown indifference or resistance to improving other key areas affecting its organization and employees. Our 2004 audit concluded that MWD had struggled to establish an effective ethics office in compliance with state law, and we made several recommendations to strengthen the office's practices. Once again, although MWD had agreed to implement our recommendations, this audit found that MWD's ethics office still suffers from insufficient policies and procedures, as well as threats to its independence. For example, not only has MWD failed to ensure that its ethics office follows best practices, but these shortcomings have allowed MWD's management to interfere with the ethics office's work on two important cases. Further, MWD's leadership has demonstrated a persistent unwillingness to ensure that the ethics office has the necessary resources and authority to investigate ethics complaints.

MWD requires certain employees who work at remote pumping plants to live on-site in housing it provides. However, despite being aware since at least 2016 of issues that threaten both the safety and quality of life of the employees who reside in this housing, MWD has not prioritized responding to these issues. Employees told us that MWD is slow to respond to maintenance requests, even when the issues raised—such as broken air conditioning units in a climate that exceeds 110 degrees Fahrenheit—pose possible safety risks to the workers and their families. MWD's procedures for responding to housing issues do not ensure that it will respond in a timely fashion to maintenance requests to resolve issues that potentially threaten the safety of its employees. Further, its maintenance database does not reliably track how long it takes MWD to resolve those issues.

More than five years into the process of addressing its housing problem, MWD is still another five years from a long-term solution. After commissioning two separate housing assessments in 2016 and 2019, MWD finally embarked on a plan in 2020 to completely replace most of its housing units. However, this effort is expected to take MWD until 2027 to complete and to cost $146 million. Although the plan will address many of the known issues with MWD's housing, the employees who reside in that housing should not have to suffer from additional delays. Finally, although MWD's safety program generally aligns with state laws, its safety policies do not require a minimum level of collaboration between management and safety staff, nor do they define retaliation or create a process for responding to retaliation concerns from employees who raise safety issues.

Agency Comments

MWD agreed with our recommendations and stated that it plans to implement them.

Recommendations

The following are the recommendations we have made as a result of our audit. Complete descriptions of the findings and conclusions that led to these recommendations are in the chapters of this report.

Legislature

To ensure that the issues we discuss in this report are finally addressed, the Legislature should amend state law to include one or more mechanisms by which it can revoke or limit MWD's authority over key personnel and ethics processes in the event that MWD again fails to take corrective action.

To ensure that MWD does not again fail to implement our recommendations, the Legislature should adopt legislation requiring MWD to formally adopt procedures for hiring and promoting employees. In doing so, it should direct MWD to ensure that those procedures include specific guidance to human resources staff and hiring managers on when competitive hiring processes are required, as well as on evaluating and scoring applicants and documenting those reviews. Finally, the Legislature should require MWD to make those procedures available to all MWD staff and applicants and to train relevant staff on following those procedures.

To ensure that MWD's ethics officer has the authority to independently investigate allegations of ethics violations, the Legislature should amend the requirements in existing state law to include the following:

- Establish MWD's ethics officer as the sole authority for interpreting MWD's ethics rules when conducting investigations into alleged ethics violations.
- Grant MWD's ethics officer the authority to contract with outside legal counsel for the purpose of receiving independent legal advice.
- Require any employee within MWD, including board members, to provide to the ethics officer any documents requested as part of an ongoing investigation without waiving any privileges that may apply.
- Prohibit any employee within MWD, including board members, from interfering in any way in an investigation.

MWD

To ensure that it is complying with state and federal laws as well as best practices, by October 2022 MWD should update its EEO policy to:

- Include a robust definition and examples of retaliation.
- Include information about an employee's right to file a complaint directly with the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC).
- Make explicit reference to written investigatory procedures and describe where employees can obtain a copy of those procedures.
- Ensure that the policy accurately reflects all other requirements in state and federal law. In order to do so, MWD should establish a process for regularly reviewing the policy to determine whether changes are needed.

To ensure that it has effective and up-to-date policies on related personnel matters, by October 2022 MWD should review and update its sexual harassment policy as needed and develop an official policy defining and prohibiting abusive conduct.

To better position itself to handle all EEO responsibilities required by state and federal law and best practices, by October 2022 MWD should implement the following improvements to its EEO office:

- Create and fill additional positions that are commensurate with the workload of the EEO office, including additional staff to handle investigations, training, and compliance.
- Assign formal, written responsibilities for specific staff within the office.
- Structure the EEO office in such a manner that it can operate independently, with minimal potential threats to impartiality.

To ensure timely response to EEO complaints, by October 2022 MWD should update its investigation procedures to include time frames that match DFEH best practices for responding to, investigating, and closing EEO complaints and should adhere to those time frames. MWD should report to its board quarterly on how many EEO complaints have been received and investigated, including how many of those investigations surpassed the time frames in MWD's procedures.

To avoid future instances in which EEO complaints go unaddressed, by June 2022 MWD should develop written procedures that specify how non-EEO staff who receive complaints from employees should handle referrals of EEO complaints to the EEO office, and MWD should train staff on those procedures.

To ensure that the EEO office has appropriate jurisdiction over EEO complaints, by June 2022 MWD should develop written procedures for handling potential threats to impartiality in investigations. These procedures should contain explicit conditions in which a party other than the EEO office, such as the ethics office or the general counsel's office, plays a lead role in an EEO complaint.

To ensure that all EEO complaints and their outcomes are recorded accurately and promptly, by October 2022 MWD should implement an electronic recordkeeping system that will allow for accurate and complete tracking of EEO complaints in a single location. MWD also should designate an individual to be responsible for logging, tracking, and updating EEO complaint records.

To help ensure equity and consistency in its disciplinary process, by October 2022 MWD should implement a written, formal process that outlines the steps that it must follow and the factors it must consider when deciding whether and how to issue discipline. MWD should also develop a recordkeeping policy that documents the disciplinary process so that it can demonstrate that its process is thorough and consistent.

To prevent and address mistreatment of complainants and potential violations of its retaliation policy, by October 2022 MWD should do the following:

- Develop written procedures for identifying and intervening in potential retaliation while EEO investigations are ongoing.
- Dedicate a person to follow up with complainants after EEO investigations to ensure that incidents involving potential retaliation are not occurring, as well as track these follow-up discussions.

To ensure that the board is informed of how often EEO matters are being settled and by what means, by October 2022 MWD should:

- Amend its administrative code to require that all personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—be reported quarterly to the board's Legal and Claims Committee, regardless of settlement type.

- Develop a written policy that outlines mandatory information required when reporting settlements. This reporting on each settlement should include whether EEO issues were implicated, whether the employee is still employed by MWD, the existence and type of any financial or confidentiality terms, and whether MWD has taken any corrective action in response to the alleged issues.

- Implement centralized recordkeeping procedures for all employee settlement agreements, including a means of confidentially indicating the existence of such settlements in the EEO complaint database, its personnel database, or some other central repository.

To ensure fairness and accountability in the hiring process, by October 2022 MWD should adopt and publish comprehensive formal hiring procedures that include the following elements:

- A documented process for screening applications based on defined criteria.

- Clear instructions for justifying hiring decisions, with examples of appropriate justifications.

- Document retention requirements for human resources staff and hiring managers that align with the steps of the hiring process required in MWD's hiring procedures.

To promote consistency in the hiring process, by April 2023 MWD should formally train hiring managers and human resources staff on their roles and responsibilities.

To prevent bias in hiring, by October 2022 MWD should reinstate the EEO office's role in the hiring process and develop formal procedures describing that role.

To better analyze its workforce demographics and identify potential barriers to employment, by April 2023 MWD should develop formal procedures for analyzing employee demographics and taking appropriate action based on those data. As part of this process, MWD should report to its board on the results of these analyses and actions.

To ensure that responsible parties have the information they need to make improvements, by June 2022 MWD should annually share the results of its demographic analyses with its various management groups as well as its recruitment staff.

To ensure that its ethics office is independent, as required by state law, by October 2022 MWD should revise its administrative code to:

- Prohibit interested parties from participating in the office's investigation process, except when necessary to provide information or otherwise respond to allegations.

- Establish the best practices highlighted in this report for protecting the independence of the ethics office, such as ensuring that the ethics officer has sole authority to interpret MWD's ethics rules and that the ethics office can obtain advice from outside legal counsel.

To better protect those employees required to reside in employee housing from the issues threatening the safety and habitability of this housing, by October 2022 MWD should:

- Improve the detail and consistency of its current procedures for responding to maintenance requests. These enhanced procedures should detail when MWD will handle a request on its own and when it will address a request as part of a larger effort, and they should establish clear and reasonable time frames for each scenario.

- Establish procedures for more reliably tracking the length of time it takes to respond to housing issues and regularly report its performance on these issues to the board, including any measures it has taken to improve this performance.

- Develop a contingency plan for comprehensively addressing its long-term issues with housing—such as installing prefabricated homes or renovating existing units—in case its current plan for replacing employee housing is delayed.

To better protect the safety of its employees, by June 2022 MWD should revise its safety policies to establish a minimum level of collaboration between safety representatives and management, such as establishing requirements for regular meetings and requiring managers to attend safety committee meetings.

To better ensure the effective handling of safety complaints and the protection of workers who make them, by October 2022 MWD should enhance its written policies to formally define retaliation and include specific steps responsible parties should take when performing the duties laid out in policy, such as protecting employees from retaliation.

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Introduction

Background

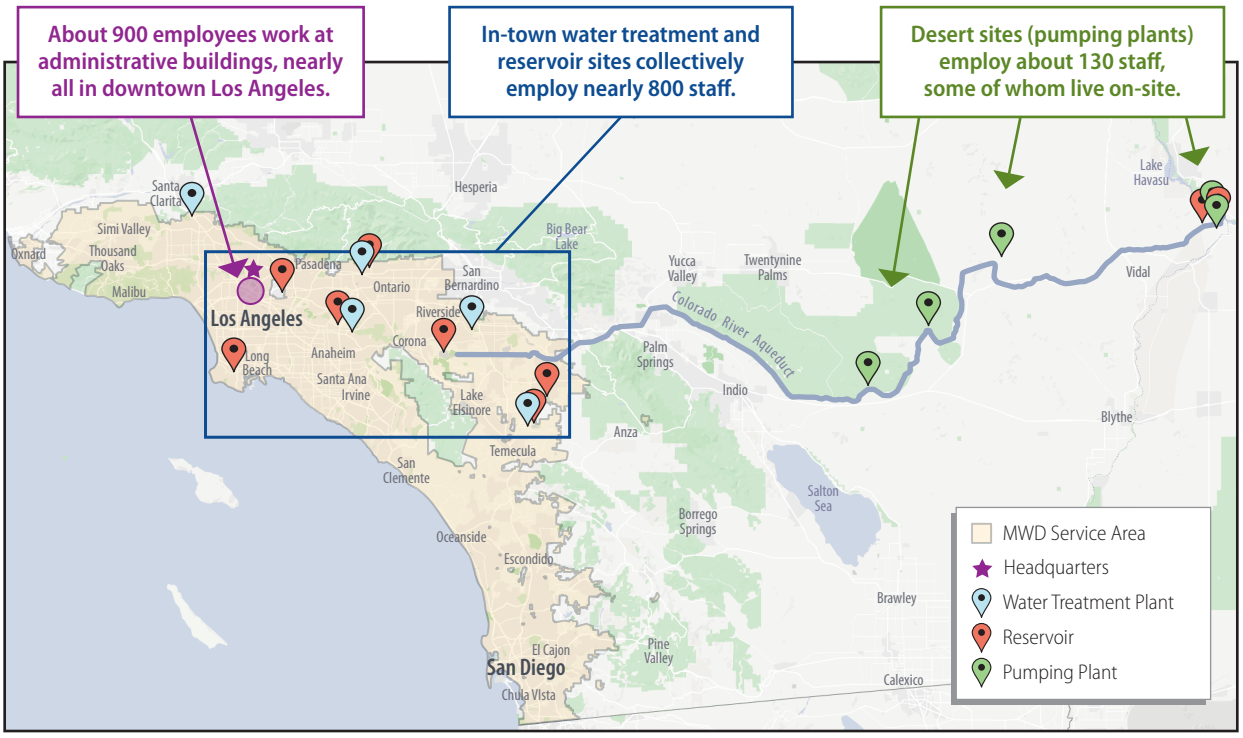
In order to bring water from the Colorado River to Southern California, in 1928 the Metropolitan Water District Act (Water District Act) allowed Southern California municipalities to create the Metropolitan Water District of Southern California (MWD). When MWD originally began delivering water, its service area consisted of about 625 square miles. In the nearly 100 years since, MWD's service area has expanded to 5,200 square miles. Today, MWD is the largest distributor of treated drinking water in the United States, delivering water to around 19 million people living in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties through its agreements with 26 member agencies.

Water Infrastructure

To supply its service area with water, MWD owns and operates an extensive range of facilities, including five pumping plants, 15 hydroelectric plants, nine reservoirs, five water treatment plants, and 830 miles of large-scale pipes. About 25 percent of MWD's water comes from the Colorado River via the 242-mile Colorado River Aqueduct, which MWD completed constructing in 1939, along which pumping plants, canals, siphons, and pipelines bring the water to Southern California. The pumping plants serve as crucial infrastructure that lifts the water 1,617 feet over terrain along the path of the aqueduct. Because the pumping plants operate 24 hours per day for much of the year, staff must be on site to report to the pumping plants at all times. The plants are located in remote areas, with some more than 50 miles from the nearest town or residential area. Therefore, MWD owns more than 100 housing units located at the plants and requires key staff to reside in them while on duty. Figure 1 illustrates the locations of MWD's facilities, as well as MWD's headquarters in downtown Los Angeles. As Figure 1 shows, MWD employs more than 1,800 full-time employees across all its worksites and offices.

Under a contract with the State, MWD also has access to nearly half of the water carried to Southern California along the 444-mile California Aqueduct. As with the water from the Colorado River Aqueduct, MWD treats this water to ensure that it is safe to drink before delivering it to MWD's member agencies.

Figure 1
MWD Operates Water Plants and Reservoirs Across Southern California



Source: Analysis of MWD site location and employment information.

Governance and Workforce

MWD is governed by a 38-member board of directors, with each representing the district's 26 member agencies. The Water District Act requires the board to include at least one representative from every member agency. However, member agencies may be granted additional representatives based on the assessed property value within their jurisdiction. For example, the city of Los Angeles has five representatives on the board and the San Diego County Water Authority has four. Smaller member agencies, such as Glendale and Beverly Hills, each have one representative on the board.

The board directly oversees four officers responsible for managing MWD's day-to-day operations. The general manager serves as the chief executive of the district and is responsible for managing all of MWD's administrative, operational, and ministerial activities not specifically reserved to the board or another officer by law or board order. The board selected MWD's current general manager in

June 2021. Other officers include MWD's general counsel, general auditor, and ethics officer, each of whom has distinct authority and responsibilities under MWD's administrative code. MWD has a strong financial position as evidenced by its most recent financial statements. For the fiscal year ending June 30, 2021, MWD had operating revenue of nearly $1.6 billion and an operating income of nearly $200 million. MWD ended the fiscal year with more than $500 million in unrestricted reserves.

Nearly 900 of MWD's employees work in its Water System Operations (WSO) group, responsible for treating and delivering water to MWD's member agencies. Located within the WSO group is the Operational Safety and Regulatory Services (SRS) section, which is responsible for developing and enforcing workforce safety policies that align with state law. MWD's remaining employees perform administrative, legal, technical services, and other duties in support of MWD's mission. Among these other duties is the role of MWD's Real Property group, which—in addition to other property management functions—is responsible for maintaining and operating MWD's employee housing.

In addition to MWD's administrative code and operating policies, aspects of its operations and workforce are governed by contracts with four individual employee bargaining units, which cumulatively represent nearly all of MWD's employees. These union contracts establish represented employees' terms and conditions of employment, including pay structure, benefits, leave time, and working conditions. They also include processes by which employees can formally object when they believe management has violated the terms of the contracts. The contracts contain broad requirements for how MWD makes hiring decisions. For example, the contracts require MWD to conduct an internal hiring process when a sufficient number of qualified MWD employees apply for an open position. Further, the contracts allow for MWD employees to request, and be granted, certain types of promotions based on their responsibilities and performance without undergoing a competitive application process.

Equal Employment Opportunity at MWD

State and federal laws prohibit MWD from discriminating against its employees or job applicants on the basis of any protected characteristic, including race, sex, disability, age, sexual orientation, and gender identity. In addition, the laws prohibit certain behavior in the workforce, including unfair treatment based on protected characteristics, sexual harassment, and retaliation for engaging in a protected activity, such as reporting alleged discrimination. In practice, sexual harassment can include unwelcome sexual advances,

requests for sexual favors, inappropriate sexual comments, or offensive comments made based on a person's sex. Collectively, these prohibitions are commonly referred to as equal employment opportunity (EEO) protections. MWD has written EEO and sexual harassment policies that repeat the prohibitions in law and inform employees how to file EEO complaints.

MWD operates an EEO office within its larger human resources group. The EEO office is responsible for receiving, investigating, and resolving EEO complaints. Complaints may come from affected employees directly or from others, including managers who become aware of potential issues. Other offices within MWD—such as its ethics office, its general counsel's office, and other divisions of human resources—also receive and refer potential EEO complaints to the EEO office. Before MWD hired a second EEO office employee in December 2021, the office had one staff member, MWD's EEO manager, who was responsible for receiving and reviewing complaints to determine whether the circumstances described indicate possible noncompliance with MWD's policies. If so, state regulations require MWD to investigate. Although MWD used to conduct some of its EEO investigations with its own staff, the EEO manager explained that she currently refers all investigations to an external investigator with the assistance of the general counsel's office, which then contracts with outside legal counsel to conduct the investigation. Although this referral and contracting process is not described in MWD's EEO policy, the EEO manager told us she has taken this approach since early 2020 due to a lack of internal resources to investigate complaints.

The EEO manager has additional responsibilities, such as notifying the employee who filed the complaint of the decision as to whether to investigate the complaint. Upon conclusion of an investigation, the findings are summarized in a closing memorandum to the parties. Finally, if it is determined that disciplinary action may be warranted, the EEO office informs the respondent—the party that is the subject of the complaint—of that determination and refers the matter to the employee relations section. Employee relations is a separate section within the human resources division responsible, in part, for ensuring that MWD takes appropriate corrective action when its EEO policy is violated. Aside from the complaint and investigation process, the EEO manager has additional responsibilities related to legally-mandated reporting about the demographics of MWD's workforce.

Recent Personnel Concerns and MWD's Response

MWD has come under recent public scrutiny over its handling of EEO complaints, including allegations that it retaliated against complainants. In board meetings throughout 2020, MWD employees presented allegations to the board describing workplace harassment they said they had experienced, including sexual harassment and discrimination based on protected characteristics. Some of the employees also described what they perceived to be insufficient responses by MWD. In some cases, the employees alleged that MWD's management had retaliated against them for filing official complaints. In response to these allegations, in November 2020, three members of MWD's board called for an independent review.

In December 2020, MWD contracted with a law firm to review allegations of systemic EEO issues at MWD and to evaluate MWD's current policies and processes for handling EEO issues.[1] The law firm released the results of its review in July 2021. Although the executive summary accompanying the law firm's full report concluded that MWD has not properly responded to certain EEO issues in the past, it stated that the "review data did not support a finding of current widespread EEO issues" at MWD. However, the firm's full report contains survey data indicating that many employees, particularly women and people of color, currently believe MWD's workplace is not safe or respectful. The survey results also reflect a significant split between the perceptions of staff and management. For example, although 78 percent of managers responded that MWD's working environment was safe and respectful for racial and ethnic minorities, only 45 percent of employees overall responded in the same way. The report also made a number of recommendations intended to strengthen MWD's internal policies and improve its handling of EEO complaints.

MWD established a Diversity, Equity, and Inclusion Council (DEI Council) in July 2020. Part of the DEI Council's stated purpose is to ensure accountability in MWD's commitment to create an inclusive work culture that values diversity and equity for all MWD employees. For example, one of the DEI Council's objectives is to identify diversity, equity, and inclusion barriers that affect hiring and promotions. It is composed of representatives from MWD's four bargaining units and from employee resource groups, including the Black Employees' Association and Women at MWD. The DEI Council works with MWD's management to develop recommendations. However, the makeup of the DEI Council has been somewhat controversial, with the women's caucus of

[1] Our office contracts with this same law firm for training and legal services.

MWD's largest bargaining unit boycotting the council because of management's involvement. In March 2022, MWD's general manager explained that the council is still in its infancy and that he expects a DEI officer—which MWD plans to hire in 2022—to lead the development of the council's strategic priorities.

Prior State Audit and Relevant Legislative Action

Our office has previously reviewed MWD in areas relevant to this audit report. In 2003, the Legislature directed our office to conduct a review of MWD that included its personnel policies and practices. In 2004, our office published an audit report concluding, among other findings, that MWD's hiring policies and procedures were decentralized, were informal, and allowed the opportunity for favoritism.[2]

Our 2004 audit also criticized MWD's failure to operate an independent ethics office as required by state law. In 1999, reacting to allegations of misconduct by MWD's board of directors, the Legislature required MWD to create an ethics office that is independent and not subject to political influence. State law directs MWD to adopt ethics rules, such as those governing lobbying and conflicts of interest, and to enforce those rules for all MWD employees, officers, and board members. However, the 2004 audit determined that MWD's ethics office did not independently investigate complaints and suffered from additional issues, such as having no formal process for handling complaints and having inconsistent ethics policies. Accordingly, the audit recommended that MWD implement an ethics office that complied with the law's requirements and develop formal written policies and procedures that are presented consistently.

[2] Report 2003-136, *Metropolitan Water District of Southern California: Its Administrative Controls Need to Be Improved to Ensure an Appropriate Level of Checks and Balances Over Public Resources*, June 2004.

Chapter 1

MWD'S PERSISTENT FAILURE TO ADDRESS EEO ISSUES HAS NEGATIVELY AFFECTED ITS EMPLOYEES

Chapter Summary

MWD has not dedicated sufficient attention or resources to its EEO policy or its EEO office, which is responsible for receiving, investigating, and resolving EEO complaints. EEO complaint investigations at MWD have been delayed, overlooked, and poorly tracked. As a result, employees have been subjected to dysfunctional and potentially unsafe workplace situations for unnecessarily long periods of time.

MWD has made slow and sometimes apparently inconsistent decisions about whether and how to address policy violations and other problematic behavior by employees. Our review also determined that MWD has not established sufficient processes to prevent potential violations of its retaliation policy or to intervene effectively when such behavior occurs. Perhaps as a result, MWD has a problem retaining employees who file EEO complaints. Finally, MWD has often used confidential agreements when settling EEO issues with employees, and it has not always reported on those agreements to its board as required.

MWD Has Not Prioritized EEO Complaints or the Resources Needed to Respond to Them

MWD's EEO policy and procedures do not align with best practices in key areas. Additionally, addressing some EEO complaints has taken MWD much longer than it should by any reasonable metric, including MWD's own investigation procedures. As a result, employees wait for resolution—and may remain in problematic work situations—much longer than MWD should allow. MWD's inadequate planning and underinvestment in resources for its EEO office has contributed to the delays we observed.

MWD Does Not Conduct Timely Investigations of EEO Complaints, Eroding Employee Confidence and Delaying Corrective Action

Because it is an employer, state law requires MWD to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct. Employers are also required by law to have written policies that describe prohibited conduct and to give employees a means to report misconduct and seek resolution.

State law additionally requires employers to create processes to ensure that complaints are investigated and closed in a reasonable amount of time and that complainants receive timely responses.

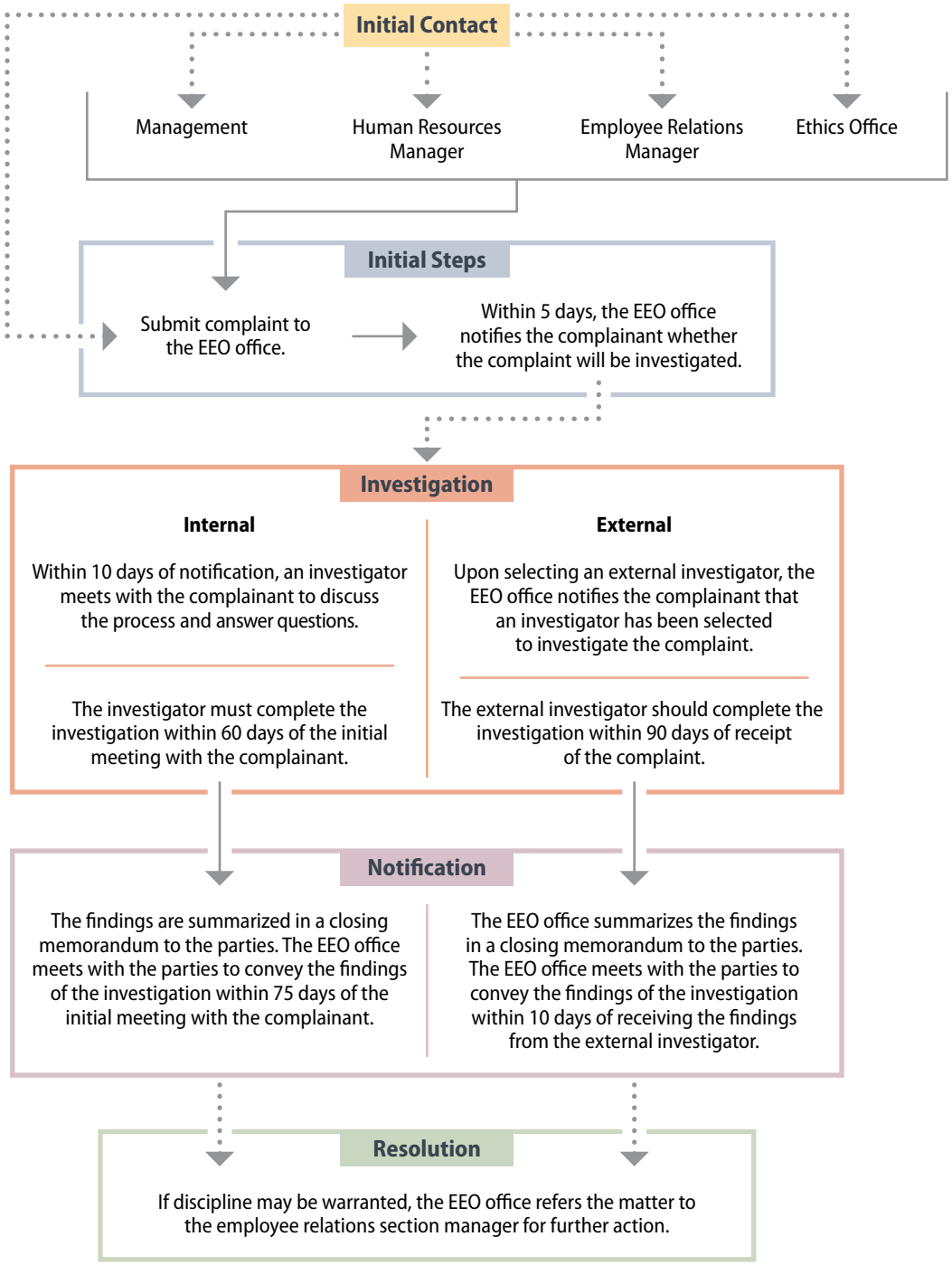
Although state law does not specify time frames for how long it should take to initiate and conduct an EEO investigation, guidance issued by the California Department of Fair Employment and Housing (DFEH) recommends that employers do so promptly, or as soon as is feasible. The guidance goes on to note that some employers begin investigations immediately for allegations of physical harassment, and within a couple of days otherwise. DFEH's guidance highlights that prompt investigations assist in stopping the harassing behavior, make clear that the employer takes the complaint seriously, and allow the employer to fairly address the issues in a manner that minimizes disruptions to the workplace and individuals involved. MWD's EEO complaint investigation procedures, depicted in Figure 2, outline the complaint process from when MWD receives an EEO complaint through the resolution of the complaint, when MWD communicates the results of the investigation to the parties involved. The procedures provide 60 days for completing investigations handled by internal investigators and 90 days for investigations handled by external investigators.

MWD's EEO investigations often took significantly longer than its procedures allow.

MWD's EEO investigations often took significantly longer than its procedures allow. We reviewed 28 EEO complaints filed since 2004 to determine their outcomes and whether MWD complied with its policy and procedures. MWD exceeded its time frames for completing investigations in 22 of the cases that we reviewed, and some delays were significant. Specifically, for three internal investigations, MWD exceeded its 60-day time frame by more than two months. One of these investigations took 453 days. Eleven external complaint investigations also exceeded the 90-day time frame by more than three months; one took 580 days to complete and another took 344 days.

When we asked why EEO investigations take so long to complete, MWD's EEO manager cited the use of external investigators as one reason for delays. The EEO manager explained that, because external investigators do not necessarily follow the timelines outlined in MWD's investigation procedures, MWD no longer attempts to follow those procedures and does not provide them to employees despite the requirement in state law that it do so. The MWD attorney responsible for retaining external investigators cited other circumstances that contribute to lengthy investigations, including uncooperative witnesses, extended employee absences, and EEO complaints that raise complex issues. Nonetheless, some of the investigations we reviewed took longer than they should by any reasonable metric. Further, MWD's reasoning does not justify its abandoning its investigation procedures altogether, nor does it explain the delays we observed in other parts of the EEO complaint process.

Figure 2
MWD's Procedures for Investigating EEO Complaints Include Specific Time Frames for Key Steps



Source: MWD's EEO policy and EEO investigation procedures.

For example, the investigations we reviewed also featured other troubling delays related to initiating investigations. As Figure 2 shows, notifying a complainant whether an investigation will occur is the first major step in the EEO process and should occur within five days of receiving the complaint. Of the 28 cases we reviewed, MWD failed to meet this time frame in 16 cases, and in nine complaints the EEO office did not inform the complainant whether an investigation would occur until more than a month after receiving the complaint. In one instance, the EEO office took more than six months to respond to an allegation of discrimination.

MWD also failed to summarize its investigation findings in a timely fashion. Summarizing findings in a closing memorandum to the parties involved is a key step in the investigation. According to MWD's procedures, depicted in Figure 2, the EEO investigator must meet with both the complainant and the respondent to notify them of the investigation findings before any corrective action can be taken or the case can be closed. Making these notifications promptly is clearly in the best interests of the parties involved. Despite the importance of this step, in 19 of the 28 cases we reviewed, MWD failed to meet with the parties within the required time frames. For six of these cases, more than a month passed between the completion of the investigation and the time when the EEO office communicated its investigation results. In one case, it took the EEO office 79 days to do so. Delays in initiating and closing investigations undermine MWD's responsibility to both complainants and respondents and erode confidence in the EEO process.

EEO Case Example 1

- On multiple occasions, the respondent informed the manager that the respondent would not work with the complainant because of a previous EEO complaint the complainant made years earlier.
- The complainant filed an EEO complaint after the respondent refused to work with the complainant. At the same time, the manager finally reported the respondent's statements to the EEO office. MWD did not notify the complainant until two months later that it would conduct an investigation.
- During the eight months before the investigation concluded, the respondent made additional attempts to sabotage the complainant's job performance and, in the process, potentially put the physical safety of other employees at risk.
- MWD substantiated that the respondent retaliated against the complainant but did not inform the parties of the findings for nearly a month.
- More than a year after the investigation concluded, MWD finally issued discipline to the respondent.

Note: Because of the confidential and sensitive nature of the subject matter covered in this chapter, we limit the detail in the examples we discuss to avoid disclosing the identities of any of the parties involved.

Because of MWD's delays, employees may continue to work in dysfunctional or potentially unsafe situations for long periods. As we describe in EEO Case Example 1, we reviewed one case in which significant delays posed risks to employees' physical safety because of conduct that was ongoing during the investigation.

MWD Has Not Adequately Planned or Dedicated Resources to Its EEO Program

Beyond the delays in its investigations, MWD's EEO program is marked by other key weaknesses that negatively affect its ability to appropriately handle EEO complaints. First, MWD has not kept its policies related to EEO up to date. MWD has not updated its EEO policy since 2012 or

its sexual harassment policy since 2013. As a result, the policies have unaddressed weaknesses and have not kept pace with changes to state law and evolving best practices. Illustrating these issues is the fact that the EEO policy directs employees to submit EEO complaints to a division of human resources that is no longer responsible for handling those complaints. In addition, in contrast to a sample EEO policy issued by DFEH, the EEO policy at MWD lacks both a definition of retaliation and examples of what retaliation looks like. Finally, although MWD provides legally required training to its employees on the prevention of abusive conduct, it does not have a formal policy on abusive conduct, potentially hindering its ability to address or prevent abusive conduct that does not fit the definition of discrimination or harassment.

MWD has not acted with care or forethought when assigning responsibility for handling EEO complaints.

Another weakness in MWD's approach to EEO complaints is that it has not acted with care or forethought when assigning responsibility for handling EEO complaints. Instead, responsibility for EEO complaints and investigations has shifted within MWD's human resources group without adequate planning or reasoning. In 2011, the former human resources manager moved responsibility for administering and investigating EEO complaints from the EEO manager to MWD's employee relations section—a separate section within the human resources division responsible for ensuring that MWD takes appropriate corrective action when the district's EEO policy is violated. The EEO manager retained responsibility for employee training and reporting on MWD's workforce diversity but no longer performed the key roles of receiving, investigating, and monitoring EEO complaints. Because the announcement of this change provided no justification and the human resources manager who made the decision no longer works for MWD, it is unclear why he felt this move was appropriate.

In January 2020, MWD's current human resources manager stated that she moved responsibility for EEO complaints from the employee relations section back to the EEO office out of her concern that the employee relations section's role in the disciplinary process could have a chilling effect on EEO complainants. MWD's EEO complaint logs—documents the EEO office uses to track complaints—indicate that a chilling effect may indeed have occurred. Before the employee relations section took over the EEO process in 2011, MWD averaged 18 EEO complaints per year. During the period when employee relations was responsible for complaints, the number of annual complaints fell to an average of 11. Although other factors could have caused this decrease, it is not clear why MWD did not anticipate this potential negative effect of moving EEO investigations or why it took nearly 10 years to address it.

Although well intentioned, the outcome of the recent decision to move responsibility for the EEO process demonstrates a third weakness in MWD's approach to EEO complaints: inadequate staffing levels. The current human resources manager intended to hire a new EEO investigator to take over the process of investigating EEO complaints. However, she told us she never received approval for the new position from management. Left without anyone to fill the role, she transferred responsibility for investigations back to the EEO manager, who had been responsible for the process until January 2011. Although the transfer to the EEO manager was intended to be only temporary, the EEO manager was still handling EEO complaints as of January 2022, more than two years after the change.

MWD lacks the EEO staff necessary to meet its obligations to its employees.

MWD lacks the EEO staff necessary to meet its obligations to its employees. At the time of our review, all of MWD's EEO complaint investigations were completed by external investigators because MWD had not dedicated resources to do so internally. In December 2021, MWD finally hired a single investigator to conduct internal investigations. However, that staff level falls short of the three investigators that an external review of MWD's EEO process recommended that MWD hire. In addition, MWD will also need to designate sufficient staff to handle noninvestigatory responsibilities in the EEO office, such as compliance reporting and training.

MWD told us that it intends to restructure its EEO office and add resources to handle more investigations internally. The general manager indicated to us in March 2022 that MWD plans to provide adequate resources as necessary to address the volume of complaints in the time frames required by MWD's procedures. However, even though the external review recommended such additional staffing in July 2021, the general manager did not provide a time frame by which adequate staff will be in place.

MWD's Weak Processes Have Led to Uninvestigated EEO Complaints and Inaccurate Records

MWD must better account for EEO complaints that are not received directly by its EEO office. As Figure 2 on page 19 depicts, MWD's employees may submit complaints not only to the EEO office but also to other specified offices and individuals within MWD. The EEO policy requires all MWD managers, supervisors, or other designated recipients of EEO complaints to report any conduct that may reasonably violate the EEO policy and refer any complaints received immediately to the EEO office. However, MWD has not established procedures for handling and logging such referrals, and of the offices named in policy as designated recipients of complaints, only the ethics office maintains centralized records of the complaints that come directly to it. As a result, we

were only able to evaluate how MWD handles EEO complaints received by other offices by reviewing the 27 EEO complaints that the ethics office's records indicate it has received since 2016.

Our review of the 27 complaints the ethics office received revealed some delays and uninvestigated complaints as a result of a weak process for making referrals. We found that the ethics office did not always refer complaints to the EEO office in a timely manner or at all. In one instance, it took the ethics office 24 days to refer an EEO complaint, and in two other instances it took 22 days. Further, we identified a complaint that the ethics office did not refer until we brought it to the office's attention in February 2022—nearly five years after the employee submitted the complaint.

The ethics office did not always refer complaints to the EEO office in a timely manner. In one instance, it took 24 days to refer a complaint.

MWD has not ensured that once a complaint is referred to the EEO office, the EEO office follows through on the complaint. In two instances, the ethics office referred a complaint to the EEO office via email, but the EEO office did not investigate those complaints promptly. In one instance, MWD's former EEO investigator stated that because of her transition to an interim assignment and a high volume of work, this referral was missed. As a result, MWD did not take action on the complaint until February 2022, when we urged the former investigator to do so. In the other instance, the former investigator claimed to have done some follow-up on the complaint but could not provide any evidence of that. Further, we could not locate any record of the investigation in the EEO files or in the EEO log.

In addition, MWD has not established procedures for how to address potential threats to impartiality, which appears to have affected how the ethics office referred some complaints. According to DFEH best practices, workplace investigations should be impartial. Threats to impartiality may arise when there is a perception of bias on the part of the investigator, which could occur when the complainant or respondent has more authority than the investigator. For example, such a threat might arise if the EEO manager had to investigate a complaint against the human resources manager, to whom she reports. Although MWD staff we spoke to were aware of these potential issues, MWD's EEO policy does not define threats to impartiality or state how potential perceptions of bias should be handled or by whom. We identified five instances in which the ethics office decided there was a potential threat to impartiality and, in the absence of clear direction, referred the complaint to an office other than the EEO office without informing the EEO manager. Circumventing the EEO office is problematic. Unless the EEO office is informed of all EEO complaints, regardless of who ultimately investigates them, it cannot maintain accurate records or ensure that complaints

EEO Case Example 2

- MWD investigated several complaints from employees who publicly criticized the district.
- Some of the complaints included allegations of retaliation and discrimination by members of executive management and other employees at MWD.
- MWD's board approved funds to have a law firm independently investigate the allegations. The ethics officer, who coordinated these investigations, told us MWD took this approach because of potential threats to impartiality because of parties named in the allegations.
- The ethics office did not specify to the EEO manager whether the investigations would cover some or all of the allegations.
- As a result of this miscommunication about which investigations were being conducted by whom, the EEO manager referred some complaints for investigation seven months late. At least one complaint went uninvestigated altogether.

are investigated and resolved. Further, as shown in EEO Case Example 2, MWD's failure to establish procedures for how to address potential threats to impartiality increases the risk of missed or delayed investigations and can further erode employee confidence in the EEO process.

Finally, MWD has also failed to keep accurate and complete records of its EEO complaints, leaving the total number of complaints unknown. MWD's EEO logs from January 2004 through November 2021 show it received 297 EEO complaints, but the logs are inaccurate and incomplete. Our review of other sources of EEO complaints, such as those reported to MWD's ethics office and those kept by staff in the general counsel's office, identified at least 18 EEO complaints that were not included in the EEO logs.

A few different but related factors have contributed to the inaccuracy and incompleteness of MWD's EEO records. The district's EEO policy does not accurately describe who is responsible for tracking EEO complaints, and MWD does not have written recordkeeping procedures. Instead of tracking complaints centrally, multiple parties maintain separate lists, and these lists are inconsistent and incomplete in the information they contain. Further, citing a lack of resources, the EEO manager indicated in July 2021, when we began our review, that she was significantly behind in logging complaints for both 2020 and 2021. Also, despite MWD's significant financial resources, staff use imperfect and imprecise tools—such as spreadsheets—to track EEO complaints. Case management software that allows for real-time record control and ensures that all complaints are centrally tracked would be more appropriate. Despite our efforts, the serious shortcomings of MWD's recordkeeping and underinvestment in its EEO program prevented us from determining the precise number of EEO complaints received by MWD during the period we reviewed.

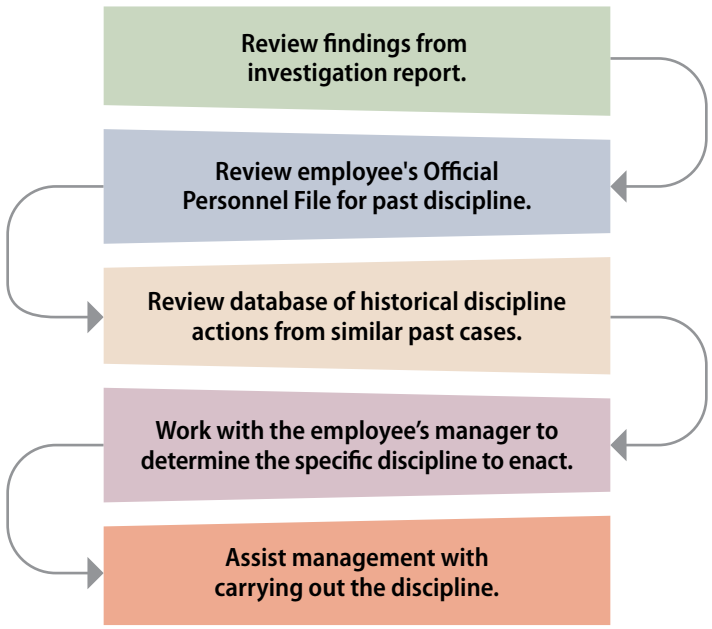
MWD's Discipline Process in Response to Substantiated EEO Complaints Is Slow, Inconsistent, and Potentially Unfair

State law requires employers to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct. DFEH guidance specifies ways in which employers should meet this obligation, such as imposing disciplinary action commensurate

with the level of misconduct and consistent with past actions. DFEH also suggests that discipline should discourage or prevent the reoccurrence of similar behavior by the employee. Despite this available guidance, MWD has not demonstrated that its approach to disciplining employees who violate policy follows these best practices.

MWD's employee relations section manager (employee relations manager) indicated the discipline process includes steps to ensure it is consistent and fair. However, our review identified issues with both the consistency and fairness of MWD's process for handling discipline when confronted with EEO policy violations or other problematic behavior identified by EEO investigations. Staff pointed us to language in contracts with its employee bargaining units as the criteria for issuing discipline. Although the contracts lay out steps MWD may take as misconduct gets more severe, they do not establish how to decide the level of discipline for any specific misconduct. Instead, the employee relations manager, whom MWD's EEO policy identifies as the individual responsible for ensuring that MWD takes immediate and appropriate corrective action when the policy is violated, explained several steps that MWD takes. As Figure 3 illustrates, these steps include reviewing findings from the investigation report and discipline from similar past cases.

Figure 3
MWD Uses an Informal Process to Determine Discipline Following EEO Investigations



Source: Interviews with MWD's employee relations manager.

To assess whether MWD followed the disciplinary process as described for the 28 EEO complaint investigations we reviewed, we evaluated MWD's disciplinary decisions for the 21 employees whom the investigations either determined had violated MWD policy or substantiated other troubling behavior, such as abusive conduct. Specifically, we identified whether and when MWD imposed discipline, the type of discipline, and how it made these decisions.

We found that, overall, MWD was slow to issue discipline for EEO policy violations and misconduct. Of the 11 cases that we reviewed in which MWD issued discipline, it did so a month or more after the conclusion of the investigation in eight of those cases. In the EEO case discussed in EEO Case Example 1 on page 20, MWD issued discipline more than a year after the investigation substantiated retaliation. EEO Case Example 3 illustrates another EEO case in which MWD issued discipline—in the form of a written warning—nearly three years after the complaint was filed. The employee relations manager stated that MWD can face delays in issuing discipline because of the need to coordinate with an employee's manager and others at MWD. However, significant delays in issuing discipline may allow discriminatory, harassing, or unsafe conduct to continue uncorrected.

EEO Case Example 3

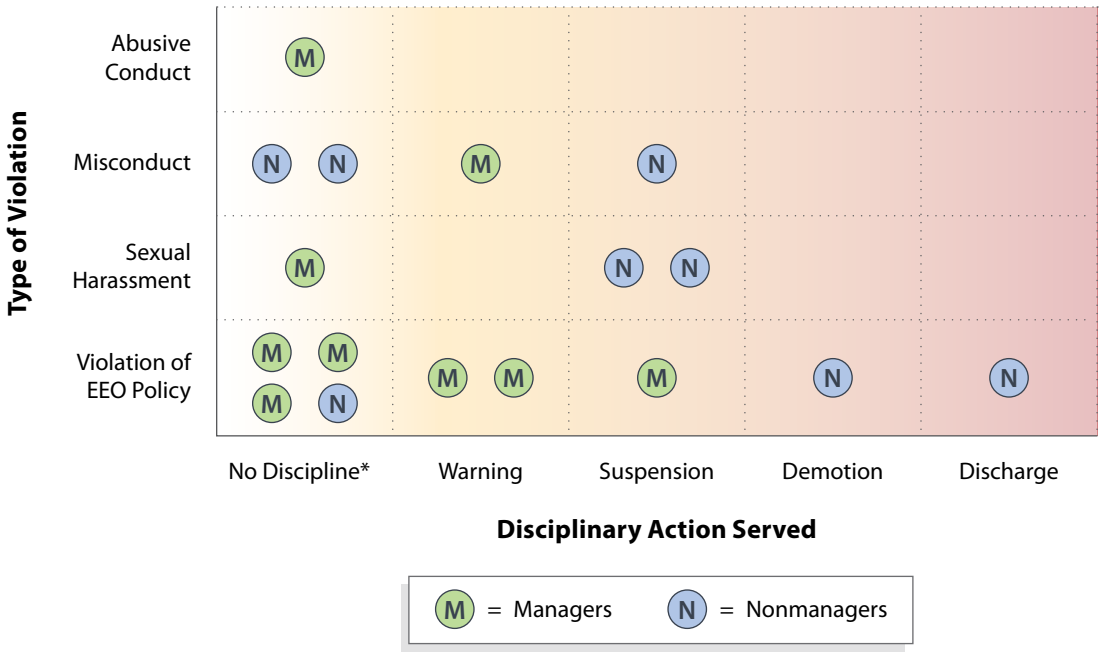
- An employee filed a complaint against a manager alleging, in part, that the employee's manager was abusive and ignored safety concerns, causing a danger to employees.
- MWD took 25 days to notify the complainant that an investigation would occur.
- After taking nearly two years to complete the investigation, MWD substantiated that the manager's conduct had, among other things, caused a danger to employees.
- MWD took an additional 79 days to notify the parties involved of the outcome of the investigation.
- To discipline the manager, MWD issued a written warning one year after the investigation was completed and nearly three years after the original complaint.

MWD also did not adequately explain all of its decisions not to impose discipline at all, which occurred for the remaining 10 of the 21 employees in the cases we reviewed. For four of those cases, the respondents left MWD before the investigation was complete. For the other six, however, MWD generally could not provide adequate justification for its decisions not to discipline the employees. In some of those cases, employee relations staff acknowledged that the investigation had substantiated policy violations but told us that other factors, such as intervention by management, resulted in no discipline in these cases. In other cases, staff could not sufficiently explain why the substantiated behavior did not amount to misconduct.

Further, our review found that MWD's decisions about whether and how to impose discipline disproportionately favored managers. For example, a manager refused to cooperate with an EEO investigation, which constituted an EEO policy violation. When employee relations conveyed the findings to the manager's superiors, those superiors indicated the importance of the manager, noting that they didn't want to "scare him away." Notably, this manager received only a warning. In another case, MWD issued a two-day suspension

for a manager who had violated MWD's sexual harassment policy. The employee relations manager indicated to us that the decision was the result of MWD's management pushing for a lower level of discipline than employee relations recommended. Further, instead of making the manager actually serve the suspension, MWD agreed to delay the suspension until after the end of the year. More than a month later, the manager retired as previously planned, having never served the suspension. In four of the 10 cases involving misconduct by a manager, we saw evidence that MWD management may have improperly influenced the disciplinary process. We did not see evidence of any such occurrences with employees who were not managers. Figure 4 provides the discipline outcomes for managers and nonmanagers among the 21 incidents of substantiated misconduct we reviewed.

Figure 4
Discipline by Type of Violation



Source: MWD EEO case files and employee disciplinary files.

Note: This figure does not include four employees who left MWD before the conclusion of their EEO investigations, which substantiated misconduct. Additionally, one disciplinary action included in this figure has been issued by MWD but was in the process of being appealed at the time of our review.

* This category contains two employees who were issued discipline but did not serve it because of agreements between MWD and the employees' bargaining units.

EEO Case Example 4

- A complainant discussed the outcome of an investigation with a family member, who was also an MWD employee, shortly after receiving the results of the investigation.
- MWD issued the complainant a two-day suspension for violating the confidentiality of the process.
- In response to our question about how it determined the level of discipline, MWD stated that it could not find any comparable discipline issued to other employees for similar infractions. Therefore, it justified the degree of discipline it issued by referencing previous discipline for unrelated misconduct by the complainant.
- However, in our review of discipline documentation, we identified a case with a similar infraction that MWD should have considered when making its disciplinary decision.

The inconsistency with which MWD has imposed discipline can be particularly problematic in the context of alleged misconduct by EEO complainants, which occurred in EEO Case Example 4. As the example shows, our review of this incident found an error in MWD's disciplinary process. We also identified similar policy violations that were arguably more egregious but resulted in less severe discipline, and we determined that MWD inconsistently considered past discipline in the cases we reviewed. Given the leniency MWD has shown other employees, often managers, its decision in this case further demonstrates that its current process is not sufficient to ensure equitable and consistent discipline.

MWD Has Failed to Prevent or Address Negative Treatment of EEO Complainants

MWD has not established ways to prevent or address mistreatment of EEO complainants during and after EEO investigations. Consequently, we observed little evidence that MWD intervened when problematic behavior toward complainants occurred, and we found that many complainants leave MWD after participating in the EEO process. MWD's ongoing resistance to addressing substantiated retaliation further demonstrates its troubling tolerance of EEO-related misconduct issues and suggests a larger cultural problem.

MWD Lacks Processes to Detect Potential Mistreatment of Complainants and Has Not Responded to Clear Evidence of Retaliation

State and federal laws prohibit employers from retaliating against employees for engaging in a protected activity, such as filing an EEO complaint. DFEH best practices warn against a broad range of behavior toward complainants and prescribe preventive and responsive measures employers should take. DFEH guides employers to counsel all parties not to retaliate and to be alert for signs of retaliation—including actions taken by peers that go beyond illegal forms of retaliation, such as failing to communicate with the complainant. Finally, DFEH recommends that employers check in with a complainant after the investigation—regardless of whether the allegations were substantiated—to proactively ensure that the complainant is not experiencing retaliation.

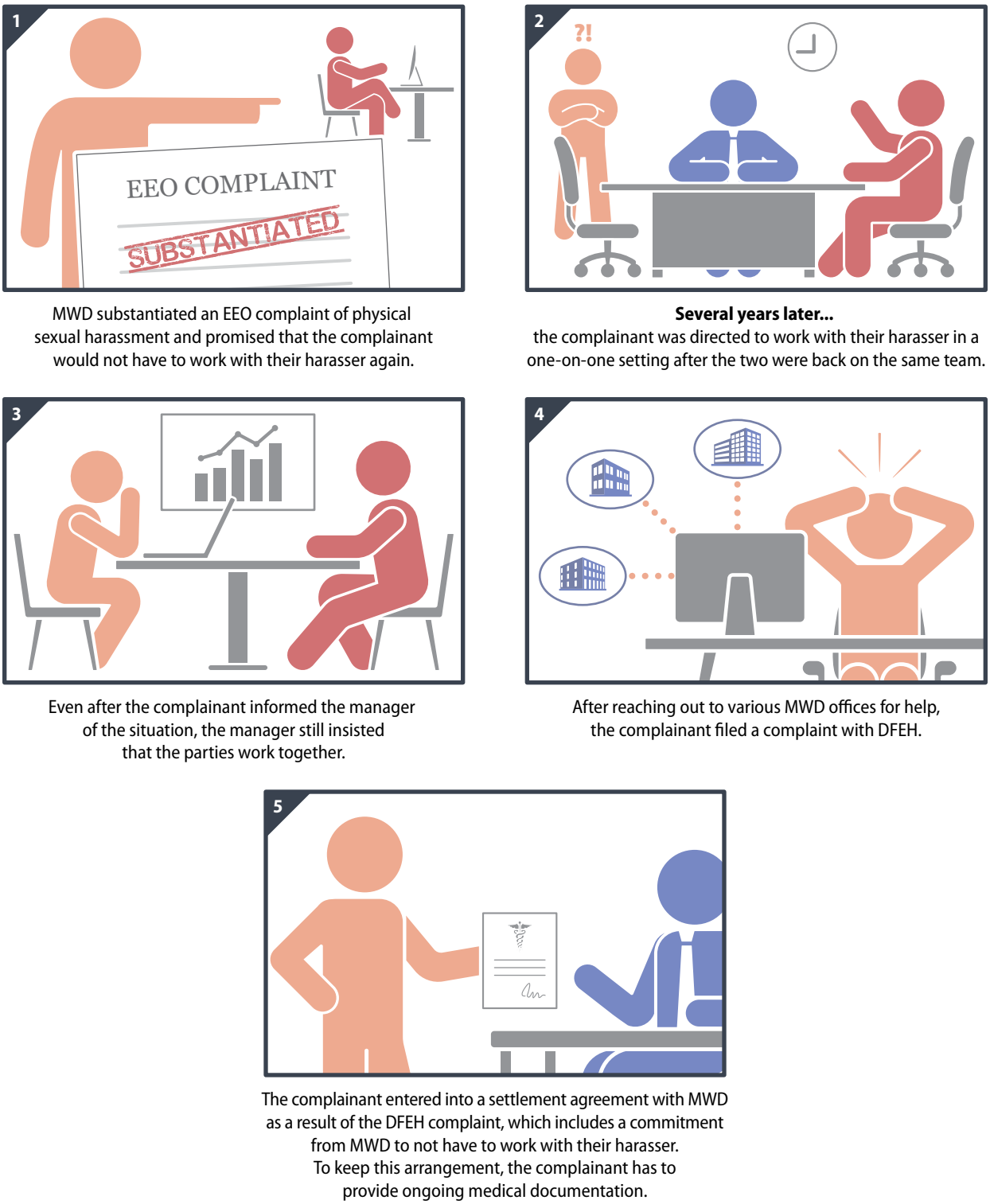
MWD has not established sufficient processes to prevent or proactively address potential violations of its retaliation policy. Its EEO policy does not define retaliation but does state that retaliation will not be tolerated. MWD includes examples of retaliatory behavior in correspondence it sends to respondents at the beginning of an EEO investigation, such as refusing to work with a complainant. In our evaluation of MWD's policies and practices for handling EEO complaints, we did not independently investigate the merit of any complaint or conclude whether a violation of law or policy occurred. Instead, when reviewing the 28 EEO cases we selected, we considered how complainants might perceive the treatment they experienced and determined what MWD did to prevent or address problematic behavior. In doing so, we observed little evidence that MWD has processes to identify problematic behavior directed toward EEO complainants or that MWD staff intervene effectively when such behavior occurs.

In one case, MWD investigated a complaint that an employee was experiencing retaliation from a coworker. Given the lack of diversity in the work group, along with the aggressive behavior toward the complainant following a previous EEO complaint, the EEO manager expressed concern even before the investigation began that the complainant could be subject to retaliation from coworkers. The complainant's manager also told the EEO investigator that there had been tension in the work group for some time because of the earlier EEO complaint and indicated that, although he had reached out to employee relations for assistance, these issues were ongoing at the time of the investigation. However, despite these early indications of possible trouble, MWD failed to prevent dysfunction and apparent mistreatment of the employee during the investigation. Ultimately, the complainant's coworkers contacted MWD's human resources manager demanding that the complainant be removed from the work group. There is no evidence that MWD intervened after this contact occurred despite its resemblance to descriptions of retaliatory behavior in MWD's own guidance to employees. In fact, when we asked MWD about what actions it took, if any, the EEO manager thought employee relations was handling the issue. However, the employee relations manager indicated to us that he had no knowledge of the incident.

We identified instances in which MWD failed to protect complainants or treat them with appropriate care after the EEO process was complete.

We identified other instances in which MWD failed to protect complainants or treat them with appropriate care after the EEO process was complete. In EEO Case Example 1 on page 20, MWD management did not take action to protect the complainant despite being told by the respondent that the respondent intended to refuse to work with a complainant, thereby failing to uphold MWD's responsibility to prevent retaliation. In another case, depicted in Figure 5, MWD failed to protect a complainant after substantiating physical sexual harassment. As the figure shows, MWD did not

Figure 5
MWD Does Not Always Treat Complainants With Sufficient Care



Source: Analysis of MWD EEO case files and settlement agreements.

adhere to its commitment that the complainant would not have to work with their harasser in the future, and it ultimately placed the burden of resolving the issue on the complainant. MWD's inaction and its lack of thoughtful processes for handling complainants can create and exacerbate problems for those employees.

Perhaps because of its failure to ensure the appropriate treatment of complainants, MWD has a problem retaining employees who file EEO complaints. Our review of personnel records and EEO logs found that nearly one in three complainants leaves MWD within one year of an EEO complaint being closed by MWD. We identified other evidence that supports the conclusion that employees sometimes leave because of dissatisfaction with how MWD handled their EEO complaints. In one instance, an employee wrote to a manager explaining that the reason for retiring earlier than planned was because of the divisive environment of favoritism, discrimination, and retaliation the manager had created and was perpetuating in the unit.

Another employee expressed concerns in a resignation letter, stating that after raising a sexual harassment allegation against a supervisor, which the EEO office chose not to investigate, the employee felt that the supervisor began retaliating against the employee. The EEO office's response to this subsequent retaliation allegation made the employee believe that the EEO office would not address the alleged retaliation, and so the employee felt that the only choice was to resign. On the day after resigning, the employee filed a complaint with DFEH. The investigation that MWD conducted following the employee's resignation found, in part, that the EEO manager did not make a sufficient effort to understand the concerns the employee was raising and discouraged the employee from referring to the previous complaint as sexual harassment. The investigator concluded that the EEO manager's actions gave the impression that the employee could not file a retaliation complaint.

The EEO office's response to a retaliation allegation made the employee believe that the EEO office would not address the alleged retaliation, and the employee felt that the only choice was to resign.

Recent Events Demonstrate MWD's Unwillingness to Improve Its Handling of EEO Issues

Three recent retaliation investigations demonstrate that MWD's historical failure to protect some complainants is ongoing. As we summarized in EEO Case Example 2 on page 24, MWD's board approved funds to have a law firm independently investigate several complaints of alleged retaliation by MWD managers and other employees at MWD. Those investigations substantiated several instances of retaliation, some of which are summarized in Figure 6. Despite the seriousness of the law firm's findings, MWD has resisted taking action to correct these problems. Our review of confidential memos within the office of the general manager

raised serious concerns about MWD's response to the investigation findings. Indeed, at the time of our review, MWD had not committed to any action in response to the findings. Its failure to do so persists despite the fact that six months had passed since it received the outcomes of the investigations.

Figure 6
Recent Independent Investigations Substantiated Claims of Retaliation Against EEO Complainants



Source: MWD ethics officer public comments at the January 2022 MWD Organization, Personnel, and Technology board committee meeting.

In its guidance, DFEH states that an effective anti-harassment program includes buy-in from the top, meaning that management is a role model of appropriate workplace behavior, understands the policies, and demonstrates a commitment to EEO. By contrast, MWD's inaction and outright resistance when faced with problematic behavior toward EEO complainants, coupled with the other shortcomings we have discussed throughout this chapter, indicate larger cultural problems with MWD management's lack of commitment to EEO. Indeed, many employees told us they feared or have experienced retaliation for speaking up about their perceived mistreatment or other concerns. MWD's historical and ongoing actions demonstrate a failure of leadership and create, at a minimum, a perception that it tolerates harassment, discrimination, and retaliation.

Rather Than Confront Its EEO Challenges, MWD Has Resisted Transparency

MWD often used nondisclosure agreements (NDAs) when settling EEO issues with its employees. Although we did not evaluate the reasonableness of any individual NDA or its specific provisions, we are concerned that its historical reliance on confidentiality has contributed to MWD's failure to address underlying issues. This concern is underscored by the fact that we also found poor internal tracking of settlement agreements and insufficient reporting to MWD's board.

MWD Often Invokes Confidentiality When Settling EEO Matters With Employees, and the Extent of Its Settlement Activities Is Unclear

Recent changes to state law limit when employers may use NDAs as part of settling certain employee issues. Since January 2019, state law has prohibited settlement agreements from containing terms preventing the disclosure of facts related to claims of sexual harassment, discrimination based on sex, and related allegations. Beginning in January 2022, state law extended this prohibition to include claims of discrimination and harassment based on other protected characteristics in state law, such as race and sexual orientation. The law does not prohibit NDAs that keep confidential the amount paid in the settlement agreement, and it only applies to agreements related to claims filed in civil actions or administrative actions, such as complaints filed with the U.S. Equal Employment Opportunity Commission (EEOC) or DFEH (agency complaints). Because the restrictions in the law were recently enacted, they did not apply to most of the MWD employee settlements we reviewed as part of this audit. Additionally, we did not identify any violations of the law in the agreements we reviewed for which the 2019 law applied.

We reviewed settlement agreements for the period between 2004 and 2021 and identified 37 that resulted wholly or partially from EEO issues. Of those 37 agreements, 29 contained NDAs. Additionally, 14 of the 37 settlements contained separate clauses that generally limited signatories' ability to make disparaging statements about the terms and circumstances leading to the settlement, or about MWD more generally. These clauses, called *nondisparagement clauses*, do not explicitly prevent signatories from disclosing the circumstances of their complaints but may nonetheless leave them feeling constrained or confused about what they can say. For example, one employee with a settlement agreement told us that the nondisparagement clause made the employee feel constrained from talking about what had happened. Appendix B of this report provides the EEO issues associated with each of the NDAs we identified.

Of the 37 settlement agreements we reviewed, 29 contained NDAs, and 14 of the 37 contained nondisparagement clauses, which may leave the complainants feeling constrained or confused about what they can say.

Under state law, MWD also can no longer include NDAs in other types of agreements. Specifically, the changes to law that took effect in January 2022 also generally disallowed provisions in separation agreements prohibiting the disclosure of information pertaining to harassment, discrimination, or other unlawful conduct. A separation agreement is a type of settlement agreement in which an employee agrees to leave MWD in exchange for payment or another benefit, such as a period of paid administrative leave. We identified 12 separation agreements that MWD entered into with employees from 2004 through 2021. Of those, nine contained NDAs. Because of MWD's incomplete EEO logs and shortcomings with its recordkeeping of settlements, which we discuss below, we were unable to determine whether all of these agreements stemmed from EEO issues. However, we identified evidence that at least some of the separation agreements may have been related to EEO issues, and MWD's assistant general counsel also informed us that some of the employees with separation agreements made reference to possible EEO complaints before entering into the agreements.

We found variability in the specific provisions that MWD included in its NDAs. For example, one NDA stated that any disclosure by the signatory would do irreparable harm to MWD that money cannot undo. The same NDA binds not only the signatory to confidentiality but also members of the signatory's immediate family. Some NDAs apply to both parties, while others apply only to the signatory. Some NDAs identify specific monetary amounts to be paid by the signatory to MWD if the signatory violates confidentiality, and others do not.

When we asked MWD about the variability of the NDAs' content, the general counsel confirmed that there is no boilerplate language for the confidentiality provisions and that each confidentiality portion of the agreement is treated uniquely. MWD's general counsel also told us that it has not enforced any of these confidentiality provisions and has no plans to do so. Because state law now prohibits the use of NDAs in a variety of types of EEO claims, and because of the potential public benefit from increased transparency about EEO issues, we asked MWD whether it would be willing to release past signatories from their NDAs. In response, MWD's general counsel told us that MWD is open to releasing signatories from their NDAs upon request.

MWD told us it is open to releasing signatories from their NDAs upon request.

Our review of MWD's settlement agreements identified issues that go beyond the content of those agreements. Specifically, because of MWD's poor recordkeeping regarding agreements, we do not know whether we identified all EEO-related agreements that MWD has entered into. MWD does not keep centralized records of its settlement agreements, and it took repeated requests before MWD provided the settlements we were ultimately able to identify.

In addition, when we reviewed the EEO office's complaint files, personnel files, and reports from MWD's external insurance carrier that handles settlement payments, we identified reliability issues with each type of record. For example, MWD's human resources manager told us that all settlement agreements were stored in employees' personnel files in sealed envelopes. However, in our review of more than 120 files of employees that were involved in EEO complaint investigations—including employees for whom we had already identified settlement agreements by other means—the agreements were not in any of the files. In some cases, we found empty envelopes where agreements should have been. The human resources manager could not explain why the settlement agreements were not located in the files or where else they could be located. Therefore, despite extensive efforts to identify all settlement agreements, MWD's unaccountable and decentralized approach to recording, processing, and storing settlement agreements raises doubts about whether we identified all of them.

MWD can and should be more transparent about what it is doing to address EEO complaints alleging discrimination, harassment, and retaliation.

MWD can and should be more transparent about what it is doing to address EEO complaints alleging discrimination, harassment, and retaliation. We did not evaluate the reasonableness of any individual NDA or its specific provisions, and state law places limits on MWD's ability to require confidentiality in certain EEO-related settlements going forward. Nonetheless, we are concerned that MWD's historical reliance on confidentiality has contributed to its failure to address underlying circumstances that lead to the EEO issues we discuss throughout this chapter. MWD's poor internal practices for accounting for settlements and its longstanding failure to inform its board about the extent of employee settlements—which we discuss in the following section—underscore these concerns.

MWD Does Not Always Report Employee Settlements to Its Board as Required

State law and MWD's administrative code delegate authority to the general manager, with the general counsel's approval, to settle any claim against MWD for amounts up to $125,000 but require board approval for settlements over $125,000. The administrative code also requires the general counsel to report quarterly to a special committee of the board—the Legal and Claims Committee—about settlement agreements with payments under $125,000, as well as any instance in which it settles or contests a claim or charge by an administrative agency.

However, MWD does not always report settlements resulting from lawsuits to the board as required, and the information it does report is not sufficient for the board to provide appropriate oversight. We reviewed eight settlement agreements that resulted

from EEO-related litigation. The general counsel could only provide documentation that it obtained board approval for three of the four agreements above $125,000. MWD also did not report two of the other four agreements on time or to the Legal and Claims Committee. Further, the information the general counsel provided to the committee varied in its detail. Of the two settlements the general counsel reported on time, only one indicated that the settlement included a monetary payment despite the fact that both settlements included such payments. Although it may be appropriate for MWD to withhold the specific amount paid in settlement agreements from public disclosure, the board nonetheless has a business need to be informed about how ratepayer money is spent. Further, neither of these reports indicated that the settlement agreements included NDAs, although both did.

MWD's reporting on other types of settlement agreements is similarly inconsistent. MWD's general counsel explained that it reports settlements related to agency complaints filed with DFEH or the EEOC only when the settlements involve a cash payment, thereby triggering the reporting requirement discussed above. We expressed our concern that this interpretation unnecessarily limits information in which the board has a clear interest, such as when the agreements have other financial impacts. In response, the general counsel stated that her office was open to reporting on all such settlements if we recommended that it do so.

Further, MWD does not report to its board all settlements that it claims to have reported. We identified 17 settlements that originated from agency complaints, and nine of those included cash payments. However, the quarterly reports that the general counsel's office made to the Legal and Claims Committee did not include four of those nine agreements, even though they should have. For four other instances that the general counsel's office reported to the board, we again noted that its reporting was late or lacked detail. Of the eight settlements that the general counsel did not report because they did not involve cash payments, we identified that four of them nonetheless had financial impacts for ratepayers because the settlement terms included promotions, back pay, or paid leave. Therefore, we believe MWD should report these agreements to the board as it is required to do for settlements that include cash payments.

MWD still has not developed a policy for reporting employee separation agreements to its board despite a recommendation in our 2004 audit that it do so.

Finally, MWD still has not developed a policy for reporting employee separation agreements to its board despite a recommendation in our 2004 audit that it do so. During this audit, we identified 12 separation agreements between 2004 and 2021 that it should have reported to the board per our 2004 audit recommendation. Four were not reported, and six of

the eight that were reported failed to include the details that the 2004 recommendation specified, including whether the agreements contained financial terms.

Vague and incomplete reporting of settlement agreements prevents the board and MWD's other stakeholders from determining the extent of MWD's EEO issues and from holding the organization accountable. As a public agency, MWD has an obligation to its ratepayers to avoid costly settlements that result from a failure to effectively prevent and respond to harassment and discrimination. Our review indicates that greater transparency and accountability will be crucial to ensuring that MWD's management addresses the shortcomings we identified throughout this chapter.

Please refer to the section beginning on page 5 to find the recommendations that we have made as a result of these audit findings.

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Chapter 2

DESPITE BEING AWARE OF ISSUES, MWD HAS RESISTED IMPLEMENTING AN EQUITABLE AND ACCOUNTABLE HIRING PROCESS

Chapter Summary

Although MWD agreed to develop comprehensive hiring procedures nearly 20 years ago in response to a 2004 audit by our office, its process remains decentralized and informal. Instead of following best practices, MWD's hiring process gives significant discretion to individual hiring managers without corresponding accountability and is not transparent. As a result, MWD is unable to demonstrate that its hiring decisions are equitable or reasonable.

In addition, MWD's hiring process fails to protect applicants from discrimination. In fact, MWD has removed procedures designed to prevent discrimination in its hiring process, exposing applicants to potentially unfair treatment. MWD's workforce data show that women and people of color are underrepresented in certain jobs and are hired at lower rates. However, MWD has failed to meaningfully analyze these data and use them to improve its hiring processes. MWD's failure to implement our 2004 audit's recommendations to improve its hiring process and its inaction in the face of underrepresentation among its workforce demonstrate a cultural unwillingness among MWD management to ensure that it provides all employees and applicants with a fair, nondiscriminatory, and transparent hiring process.

For Nearly Two Decades, MWD's Hiring Process Has Lacked Transparency and Failed to Ensure Fairness

In response to our 2004 audit, MWD agreed to create comprehensive hiring policies and procedures. However, nearly 20 years later, MWD's hiring process still is not formal or centralized, and it does not follow best practices for hiring. Our review found poor documentation of some aspects of the hiring process, as well as noncompliance with the informal procedures MWD claims to have implemented.

MWD Has Not Formalized Comprehensive Hiring Procedures

As we discuss in the Introduction, our 2004 audit found that MWD's hiring policies and procedures were informal, decentralized, and allowed the opportunity for favoritism. Specifically, the policies

and procedures guiding the hiring process were contained in 15 different sources that were not always current or comprehensive. None of these 15 sources provided adequate guidance for all aspects of the hiring process. Because these weaknesses in its process left MWD exposed to allegations of favoritism or bias in hiring, we recommended that MWD develop comprehensive and current procedures for hiring.

MWD agreed in 2004 to implement our recommendations, yet our current audit found that the procedures guiding its hiring process are still contained in multiple sources that are neither current nor comprehensive. During this audit, MWD identified various official sources of criteria governing its hiring process: its administrative code, the contracts with MWD's four bargaining units, and an operating policy that MWD last updated in 2005. These sources direct MWD to conduct a process that ensures equal employment opportunity and attracts a highly qualified and diverse pool of applicants, and they place much of the responsibility for administering the process on its human resources group. However, none of the sources specify how human resources staff should ensure that the process is fair and transparent. These policies also do not provide direction on preventing favoritism or bias on the part of supervisors and management throughout MWD who conduct hiring processes and make hiring decisions, known as hiring managers.

MWD has not formalized the hiring procedures it has developed, nor has it distributed them. The procedures were last updated in 2012, and MWD considers them to be informal guidelines and not official policy.

Despite the importance of having detailed guidance for responsible parties, MWD has not formalized the hiring procedures it has developed, nor has it distributed them. According to its recruitment manager, MWD considers its written hiring procedures, last updated in 2012, to be informal guidelines and not official policy. Further, even though MWD titled these informal procedures "Recruitment Procedures for Hiring Managers," it has not provided them to its hiring managers. Instead, MWD's recruitment manager who oversees hiring stated that his staff work with hiring managers on a case-by-case basis to explain the process. MWD also has not developed procedures to guide those human resources staff in their oversight role. Rather, it provides them with a recruiting and selection flowchart outlining its informal procedures and the broad criteria documents we discuss above. Finally, MWD has not provided training on the procedures for its hiring managers or human resources staff. As such, the parties responsible for MWD's hiring process continue to lack sufficient guidance on how to do their jobs properly and fairly. Because it has not formalized its procedures, MWD cannot ensure consistency and hold staff accountable for following them. Not surprisingly, we also found that hiring managers do not always comply with MWD's informal hiring procedures, as we discuss later in this chapter.

MWD did not provide a compelling reason for its failure to formalize its hiring procedures in the nearly two decades since our 2004 audit. MWD's human resources manager and the recruitment manager both characterized their previous interactions with bargaining units regarding personnel policies as a barrier to formalizing MWD's hiring procedures. The human resources manager expanded on this characterization, stating that MWD has not formalized the procedures and the flowchart of the hiring process because of previous disagreements when negotiating with the bargaining units. She stated that MWD's contract with one of the bargaining units requires MWD to meet and confer and potentially bargain with the union in order to formalize or change its hiring procedures. However, our review found that the contract requires only that MWD discuss any changes to human resources procedures with the union, and not bargain regarding them, unless the changes specifically affect wages, hours, or other terms of employment. In any event, we did not find evidence that MWD has engaged in discussions with the bargaining units regarding the hiring procedures or flowchart. In fact, MWD's manager who oversees collective bargaining told us that requirements to meet and confer have not historically been a significant barrier to making changes to human resources policies or procedures and that human resources staff have not provided him with formal hiring changes to present to the bargaining units. Given MWD's inaction since our 2004 audit and its unconvincing arguments about why it has not done more, we are concerned that there is a cultural unwillingness at MWD to create a comprehensive hiring process that is transparent and accountable.

Given MWD's inaction and its unconvincing arguments about why it has not done more, we are concerned that there is a cultural unwillingness at MWD to create a comprehensive hiring process that is transparent and accountable.

MWD's Informal Hiring Procedures Do Not Align With Best Practices, Allowing Hiring Managers to Make Potentially Unfair Hiring Decisions

Although best practices emphasize establishing clear criteria for screening applications and for documenting the entire hiring process, MWD has not done so. To evaluate MWD's informal procedures, we considered guidance from the California Department of Human Resources (CalHR), which publishes best practices for state departments. We also reviewed publicly posted hiring materials from the Department of General Services (DGS), a large agency like MWD that similarly performs a variety of business functions across large geographic areas. The best practices from CalHR highlight the importance of developing and documenting application screening criteria based on the knowledge, skills, and abilities associated with the positions for which employers are hiring. Similarly, DGS requires its hiring managers to develop criteria for screening applications and to use a template to numerically score applications. Following the screening

process, DGS's policies and procedures require hiring managers to retain this information to demonstrate that the process was fair and transparent.

By contrast, MWD's processes give hiring managers flexibility and convenience at the cost of accountability and transparency. MWD has different hiring processes for internal and external applicants. When MWD conducts a purely internal hiring process because it has enough qualified internal applicants for a position, it invites all qualified applicants in for examinations or interviews. For a hiring process with external candidates, MWD's hiring managers have the discretion to select which applicants to interview. However, MWD does not require these hiring managers to document their reasons for selecting certain applicants to move forward in the process and eliminating others. As a result, there is no record of how the hiring managers justify those decisions.

MWD does not require its hiring managers to document their reasons for selecting certain applicants to move forward in the hiring process and eliminating others.

MWD's missing requirements affect large numbers of applicants. Eight of the 12 hiring processes we reviewed included external candidates. In those eight, the hiring managers eliminated numerous applicants as part of the screening process without adequately justifying their rationale for doing so. For example, one hiring manager eliminated 35 of the 44 qualified applicants but did not document how he determined which applicants would move forward. We found similar problems in the other seven hiring processes with external applicants. Although it is reasonable for MWD to reduce the size of an applicant pool before conducting interviews, the large numbers of people affected by MWD's screening decisions make it even more troubling that MWD has not adopted best practices to ensure equity and consistency in the process.

MWD's informal procedures also do not ensure sufficient justification to support hiring decisions. The informal hiring procedures describe a step in the process wherein a hiring manager justifies in writing why the chosen candidate is the best qualified. However, neither the recruiting and selection flowchart nor the informal procedures contain explanations or examples that demonstrate the level of detail hiring managers should provide to justify their selections. This lack of direction prevented us from determining whether hiring managers selected the best-qualified applicants in some hiring processes. Specifically, in five of 12 hiring processes we reviewed, the candidate that MWD selected was not the individual who scored highest during the documented panel interviews or exam exercises. Although selecting a lower-scoring applicant may be appropriate for specific reasons, such as extensive education and relevant experience, the hiring managers for the five hiring processes provided varying detail to justify the hiring decisions. In two cases, the hiring managers did not make any direct

comparison between the selected applicant and the higher-scoring applicants. In the other three cases, the hiring managers did broadly explain their reasons for choosing the selected applicant but still did not clearly compare the relative qualifications of the selected and nonselected applicants. As a result, MWD continues to risk favoritism or bias in its hiring processes, a problem that we initially identified in our 2004 audit.

MWD's Ability to Investigate EEO Complaints Related to Hiring Is Limited

Insufficient hiring procedures and documentation hinder MWD's ability to investigate claims of discrimination or unfairness.

Insufficient hiring procedures and documentation also hinder MWD's ability to investigate claims of discrimination or unfairness. We spoke with the MWD employee who was responsible for EEO investigations between 2010 and late 2019 to understand her approach to investigating EEO complaints that centered on hiring or promotional decisions. The employee explained that she used MWD's hiring and recruitment files as one of her main sources for investigating EEO complaints of discrimination in hiring. However, MWD's limited and missing documentation for parts of its hiring process may hinder thorough investigation of such complaints.

For example, the employee investigated an EEO complaint alleging that MWD did not hire the complainant because of the complainant's gender identity. In this instance, the complainant was the highest-scoring applicant for a position. The employee conducting the investigation did not substantiate the claim of discrimination, in part because the hiring manager had justified the decision in writing. However, the hiring manager's justification did not compare the two applicants to explain why the lower-scoring applicant who was hired was more qualified for the position than the complainant. Although an imperfect justification may not be enough on its own to substantiate discrimination, more thorough documentation would better allow MWD to demonstrate that no discrimination occurred and that its process was equitable.

MWD's Hiring Process Lacks Consistency and Does Not Comply With Procedures

Although MWD has made two changes intended to improve its hiring process in recent years, it has not formally adopted those changes as policy or procedures. First, in 2018, in response to concerns about favoritism by hiring managers, MWD decided that its hiring managers would no longer serve on interview hiring panels. According to MWD's recruitment manager, this change came in the form of a recommendation by the chief operating officer, but MWD did not adopt a formal policy or procedure to implement it. Second, the recruitment manager stated that in

September 2020 MWD began requiring interview panelists to complete a form to identify any relationship they have with an applicant. However, the recruitment manager said that MWD has not established a written policy or procedures related to completing the form.

MWD does not have a clear procedure for communicating hiring process changes to its employees, risking inconsistent implementation of those changes.

MWD does not have a clear procedure for communicating hiring process changes to its employees, risking inconsistent implementation of those changes. Instead, the human resources manager explained that her unit will often communicate minor changes through email memorandums. However, when MWD implemented the two changes just discussed, it did not send an email to inform staff of these new practices. Instead, it relied on individual human resources staff to inform interview panelists about the changes on a case-by-case basis during the hiring process.

Because MWD did not formalize and communicate these process changes to all relevant staff, those staff have not complied with some changes. For hiring processes we reviewed, MWD hiring managers rarely excused themselves from serving on interview panels. Specifically, hiring managers served on the interview panels in five of the six hiring processes we reviewed that began after MWD instituted the related change to its process. In fact, MWD's recruitment manager, who is responsible for enforcing hiring rules, sat on an interview panel as a hiring manager just a few months after MWD made the change.

MWD Lacks Transparency in Its Processes for Promoting Employees

MWD's process for promoting employees outside of the competitive hiring process has issues similar to those discussed above. The most common way that MWD promotes employees outside of the competitive hiring process is through management-requested promotions in place. This process is governed by the contracts with MWD's bargaining units and an operating policy, but neither source fully explains how the process works in practice. MWD's recruitment manager stated that MWD's general philosophy regarding promotions is that every employee can reasonably expect to have the opportunity to eventually promote to the journey level of his or her job type, such as engineers or technicians. However, the number of senior and principal positions (higher-level positions) is governed by business need. Therefore, only a limited number of employees will be able to move into those positions. MWD has not communicated these limitations to its employees, potentially leaving them with inaccurate expectations of their prospects for promotion. The recruitment manager acknowledged the need for MWD to update its policy to clearly communicate the philosophy to employees.

Further, MWD's processes for promoting employees provide significant discretion to managers but lack sufficient accountability. The recruitment manager stated that MWD gives managers and management teams the discretion to decide whether to use the promotion-in-place process or a competitive recruitment process for filling higher-level positions. When managers can choose to select employees for a limited number of positions without a competitive process, it enables or creates the appearance of favoritism or bias, as opposed to a promotion system based on competition.

MWD Has Neglected EEO Issues in Hiring and Lacks Diversity in Parts of Its Workforce

In addition to fairness concerns, MWD's hiring process generally does not sufficiently protect against discrimination. In fact, MWD has removed the limited EEO hiring procedures it once had in place to prevent discrimination and has not replaced them with anything meaningful. MWD's hiring and workforce data show underrepresentation of women and people of color, but MWD has failed to sufficiently analyze and respond to the potential discrimination issues raised by the data, even though state regulations require it to do so.

MWD has removed the limited EEO hiring procedures it once had in place to prevent discrimination and has not replaced them with anything meaningful.

MWD Removed Hiring Procedures That Helped Ensure Compliance With EEO Requirements, Leaving It Unable to Ensure Unbiased Hiring

MWD's hiring process lacks sufficient procedures to ensure unbiased hiring. State and federal law both require MWD, as an employer, to conduct hiring processes that do not discriminate based on protected characteristics. As we discuss previously, MWD's overall hiring process is decentralized and does not comply with best practices to ensure equity. Our review found that those shortcomings extend to MWD's ability to specifically ensure that its hiring process is free of discrimination. The only portion of MWD's hiring process that directly addresses EEO requirements is a form that prospective interview panelists must sign attesting that they will conduct legal and equitable interviews.

MWD's recruitment manager acknowledged that MWD does not have any formal procedures for preventing discrimination in the hiring process but claimed that his human resources staff brief interview panelists on EEO matters. However, despite this assertion we did not see any evidence of these briefings in our review of 12 hiring processes. Additionally, MWD's EEO manager asserted that she believes interview panelists are not adequately prepared and that MWD needs to improve EEO training for those who serve

on interview panels and make hiring decisions. She also believes that the form interview panelists sign does not ensure that panelists actually understand how to limit bias or discrimination. Further, she said that from her perspective, the overall hiring process at MWD does not currently include a sufficient focus on EEO matters.

In 2005, shortly after we completed our 2004 audit, MWD instituted changes to its hiring process intended to better ensure fairness and prevent discrimination. MWD's human resources manager at the time directed the EEO manager to ensure that MWD made hiring decisions that were fair and unbiased so that MWD's hiring process could withstand any review or audit. For example, MWD implemented a process by which the EEO manager would meet with the hiring manager and human resources staff to discuss job requirements and advertising for open positions, and to affirm MWD's commitment to EEO for applicants. As part of that process, the EEO manager also reviewed and approved interview questions and selection criteria to identify potential bias and ensure that those materials did not consider protected characteristics in the hiring process. Finally, according to the EEO manager, she would brief each interview panelist on what they could and could not do or ask during an interview, from an EEO perspective.

However, MWD soon abandoned the improvements to its hiring process that it made after our 2004 audit. Specifically, the EEO manager stated that MWD's chief operating officer at the time directed her to stop performing these activities in approximately 2007. When we asked why, she replied that the chief operating officer made the decision because the hiring process took longer with her involvement. As a result, MWD's current hiring processes lack any meaningful participation from the EEO manager—the person who should be best trained to ensure justifiable and nondiscriminatory hiring decisions.

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MWD also has fewer requirements in place than it once did for documenting that the hiring process is unbiased. In 2005 the form MWD used to document hiring decisions required the EEO manager to attest that each hiring process complied with EEO requirements. Other aspects of the 2005 form suggest that, if used properly, it would provide better assurance that hiring managers made appropriate decisions than the current form. For example, the 2005 form directed the hiring manager to contrast the successful applicant with the other applicants interviewed to specify why the selected applicant was the best qualified. By contrast, the current form simply provides a space to justify hiring decisions but provides no direction on how to do so appropriately. As we discuss above, our review of MWD's current hiring process found inconsistent and at times insufficient detail for justifying hiring decisions. Together with a lack of attention to EEO considerations, poor and

inconsistent documentation further undermines MWD's ability to ensure or demonstrate a fair and unbiased hiring process. MWD's human resources manager expressed her belief that MWD does not need to have the EEO manager specifically involved in the process. However, we maintain that MWD's hiring process has insufficient focus on EEO considerations regardless of who is directly responsible and that its process lacks requirements to ensure equity in hiring.

MWD's Hiring Data and Analyses Indicate a Lack of Workforce Diversity

State regulations require certain employers, including MWD, to analyze whether their policies or practices negatively affect employment opportunities for any group based on protected characteristics. As part of this requirement, MWD must institute a nondiscrimination program (NDP) in which it analyzes its workforce each year to identify the number of individuals in each job title by sex and race.[3] The state regulations require employers to use this information to determine whether any group is underrepresented when compared to its availability in the broader labor force. MWD breaks down its NDP analyses into job groups based on the management structure within the organization.

MWD's analyses show that its workforce is less diverse than the qualified labor market for numerous positions.

MWD's analyses show that its workforce is less diverse than the qualified labor market for numerous positions. Specifically, MWD's most recent analyses for fiscal year 2018–19 found that people of color or women were underrepresented in 42 of its 229 job groups. These 42 groups include almost 700 employees, or nearly 40 percent of MWD's total workforce. In a management group that includes 72 employees, people of color accounted for only 32 percent of the positions, even though they represented 49 percent of the available workforce for the position. In the fiscal year 2018–19 NDP report, MWD states its belief that it can reduce any underutilization of certain groups through effective outreach, recruitment, and advertising efforts to ensure an adequate pool of diverse applicants.

However, MWD's most recent hiring data suggest that its hiring processes—rather than merely the diversity of its applicant pool—could be a significant and ongoing factor in the underrepresentation of certain groups. Specifically, the data show that for qualified

[3] State and federal regulations requiring data collection do not require MWD to collect data on employees or applicants about certain protected characteristics, such as sexual orientation and gender identity. MWD also does not use other means, such as voluntary surveys, to collect information on an aggregate level. As a result, we were unable to analyze demographic information for those protected groups at MWD. However, the legal requirement that MWD analyze whether its policies negatively affect employees applies to all protected characteristics.

applicants, MWD's rate of hiring differs depending on race and sex. As part of its annual NDP analyses, MWD determines whether it hires any group of applicants at a substantially lower rate than others. We reviewed MWD's most recent analysis from fiscal year 2018–19 for the Water System Operations (WSO) group, MWD's largest, which accounts for about half of its employees. In its analysis, MWD reviewed hiring processes for 34 job groups and identified five groups in which it hired qualified applicants from one category significantly less often than qualified candidates from another. For example, although Hispanic individuals made up the majority of qualified applicants for a service worker position, MWD did not hire any of those individuals and instead hired four white applicants.

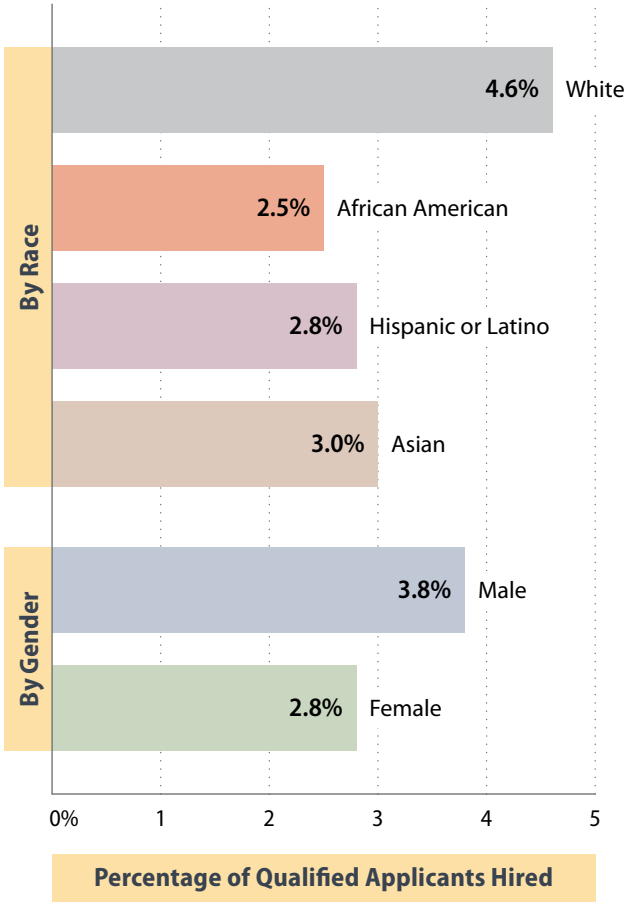
Our analysis of MWD's hiring database, which looked across MWD's workforce instead of within defined job groups, indicates broader variances in hiring outcomes based on race and sex than MWD's analyses suggest. Specifically, since January 2019, MWD has collected demographic data on applicants for 377 positions. As Figure 7 shows, among those recent hires, MWD hired qualified African American applicants only about half as often as it hired qualified white applicants. Trends for applicants of other races were similar, with white applicants hired more often than Hispanic and Asian applicants. For the same 377 positions, MWD hired qualified women only about three-quarters as often as it did qualified men. Although these numbers do not themselves demonstrate that MWD has discriminated against applicants, they do indicate significant variances in hiring outcomes depending on an applicant's race and sex. Accordingly, MWD runs a risk that the underrepresentation of women and people of color in its workforce may be, in part, the result of unfairness in its hiring process. MWD's human resources manager stated that there may be barriers in MWD's hiring process that could lead to variances in outcomes depending on race or sex, but she cannot confirm that there are barriers because human resources has not had the time or resources to analyze this issue.

MWD runs a risk that the underrepresentation of women and people of color in its workforce may be, in part, the result of unfairness in its hiring process.

MWD Failed to Use Its Analyses of Hiring Results to Make Changes to Processes to Improve Equal Employment Opportunities

MWD has not taken action required by regulation to ensure equal employment opportunities for all its applicants and employees. State regulation requires MWD to develop and execute policies and procedures designed to correct issues identified in its NDP analyses. The EEO manager explained that in theory, when she identifies hiring variances based on protected characteristics, she would evaluate the relevant hiring process and work with the human resources manager to address her findings. She was able to provide one example of this type of analysis, which she conducted in 2018 for MWD's apprenticeship program. According to the EEO manager,

Figure 7
MWD Hired Qualified Nonwhite and Female Applicants Less Often Than White and Male Applicants



Source: Analysis of MWD hiring data, January 2019 through early September 2021.

Note: We also reviewed data for the following additional racial categories: American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and Two or More Races. Although the data for some of these showed similar hiring rates to qualified white applicants, the numbers of qualified applicants in those categories were significantly smaller than those for the racial categories included in the figure. Therefore, we did not include them.

she found potential hurdles including the entrance exam and physical test in the selection process that prevented certain demographic groups from moving forward to become part of the program. The EEO manager claimed that, as a result, she was able to work on removing those hurdles and improve the success rates for those groups. However, she has not performed similar analyses since then because she lacks the necessary time and resources. In fact, the EEO manager stated that she has not worked with the human resources manager on hiring issues in recent years.

Because MWD has not analyzed the specific causes for its hiring and staffing variances, it cannot provide guidance to its board about how to address them. Instead of meaningful analyses, the EEO manager develops high-level annual reports that describe her methodology and provide very broad descriptions of the underrepresentation of women and people of color among MWD's workforce. We also found that the reports' descriptions of underrepresentation are incomplete. For example, in the fiscal year 2018–19 report to the board—the most recent at the time of our review—MWD referenced underrepresentation in various job groups but failed to mention underrepresentation among management positions. The EEO manager's analysis of the WSO group that we discuss above identified underrepresentation of people of color in two of five management job groups reviewed but did not attempt to identify causes for this underrepresentation. Finally, the annual reports primarily address the makeup of MWD's workforce and do not contain information about the variances in hiring rates by race or sex that could contribute to underrepresentation.

MWD also does not share the results of its analyses with staff responsible for overseeing and conducting the hiring process, leaving them potentially unaware of the issues and therefore not accountable for addressing them. In its NDP analyses, MWD has stated that its EEO manager will share relevant data with MWD's managers to make them aware of the issues her analyses identify. However, for the most recent analysis from fiscal 2018–19, the EEO manager acknowledged that she did not share the outcomes with MWD's management teams. This failure to share data means that, despite evidence of underrepresentation and variances in hiring rates, the management teams responsible for hiring may not even be aware of these issues or where they are concentrated. Human resources staff responsible for overseeing MWD's hiring process may be similarly unaware. However, MWD did not adequately explain why the EEO manager has not shared the data with relevant staff. We are concerned that the failure by MWD to share NDP information leaves staff responsible for hiring ill equipped to address any issues and improve diversity at MWD.

The failure by MWD to share nondiscrimination program information with management teams responsible for hiring leaves them ill equipped to address any issues and improve diversity at MWD.

Similar to the problems with MWD's hiring process that we discuss earlier, MWD's inaction when faced with its workforce data demonstrates an unwillingness to hold its processes and hiring decision makers accountable to its workforce. The fact that MWD's management has been aware of these issues for many years and has actively taken steps away from accountability and fairness indicates that its board and the Legislature must play a more direct role in MWD's hiring processes.

Please refer to the section beginning on page 5 to find the recommendations that we have made as a result of these audit findings.

Chapter 3

MWD HAS NOT DONE ENOUGH TO CORRECT LONG-STANDING ISSUES WITH ITS ETHICS PROGRAM AND EMPLOYEE HOUSING

Chapter Summary

MWD has not taken adequate action to correct issues that have affected it for several years. Our 2004 audit found that its ethics office did not comply with key requirements in state law. Yet despite agreeing to implement our recommendations almost two decades ago, MWD's ethics office remains out of compliance with state law, including the requirement that the office independently investigate allegations of ethics violations. Similarly, although MWD has long been aware of serious issues threatening the habitability of its employee housing—which it requires some staff to reside in as a condition of employment—it has not created effective processes for addressing employee maintenance requests in a timely manner. Further, MWD has struggled to implement a comprehensive, long-term solution to address significant issues with employee housing, and its current plan to entirely replace existing housing is not scheduled for completion until 2027, leaving some employees in substandard housing conditions until then. Finally, although MWD's safety program generally conforms to requirements in state law, MWD could strengthen its policies by establishing processes that require a minimum level of collaboration between safety staff and on-site management.

MWD Has Failed to Establish an Independent Ethics Office, and Its Leadership Has Inappropriately Interfered in Some Ethics Investigations

For more than 20 years, state law has required that MWD operate an ethics office to independently investigate rules violations by all members of the organization, including its board of directors. Yet MWD has failed to implement several best practices for ensuring this independence, leaving the office exposed to inappropriate outside influence. Of greatest concern is that MWD's general counsel and the former chair of its board inappropriately interfered in two ethics investigations from 2017, undermining the independence of the ethics office and causing the former ethics officer to change her conclusion in one of the cases. Despite these shortcomings, MWD only recently revised the ethics office provisions in its administrative code, which are still not consistent with several best practices.

MWD's Ethics Office Does Not Comply With State Law or Align With Best Practices

Despite knowing for nearly two decades about weaknesses that threaten the effectiveness of its ethics office, MWD has failed to ensure that the office functions independently as required by state law. As we discuss in the Introduction, in 1999 California enacted a law requiring MWD to establish and operate an ethics office and to adopt ethics rules for its employees, including its executive management and board members. The law directs MWD's ethics office to investigate complaints concerning violations of its rules, such as those related to lobbying and conflicts of interest. Finally, the law requires MWD's ethics office to operate as an independent entity that is not subject to political influence—that is, it must be free of pressure or interference from the high-ranking officials the office is tasked with investigating. Our 2004 audit concluded that MWD had struggled to establish an effective ethics office in compliance with state law, and we made several recommendations to strengthen the office's practices. At the time, MWD agreed with these recommendations and committed to implementing them. However, MWD's ethics office still suffers from insufficient policies and procedures, as well as threats to its independence.

As part of assessing the current state of the ethics office, we evaluated MWD's implementation of our 2004 recommendations and whether the ethics office follows best practices referenced in state law. State law requires the ethics rules that MWD adopts to be consistent with the intent and spirit of the laws and regulations of other specific public agencies, including the Los Angeles City Ethics Commission (L.A. Ethics Commission) and the Los Angeles County Metropolitan Transportation Authority (MTA). We reviewed these two local agencies' laws and processes and identified requirements intended to ensure the independence and quality of their ethics investigations. We also interviewed staff at these agencies to identify other relevant best practices they follow. We then compared the best practices to the processes used by MWD's ethics office and found that MWD's ethics office still suffers from key weaknesses.

Several deficiencies we identified threaten the ethics office's ability to perform its work independently and free from political influence. Our 2004 audit concluded that MWD was still trying to establish an effective ethics office and that its ethics officer had not independently investigated ethics complaints. Our current review found that although both MTA and the L.A. Ethics Commission use specific best practices to insulate their offices' ethics work from outside influence or interference, MWD has not implemented equivalent practices. For example, as Figure 8 shows, ethics leaders at MTA and the L.A. Ethics Commission are responsible for interpreting the ethics rules that they adopt and enforce. In contrast,

MTA and the L.A. Ethics Commission use specific best practices to insulate their offices' ethics work from outside influence or interference, but MWD has not implemented equivalent practices.

Figure 8
MWD Has Failed to Implement Several Best Practices That Other Agencies Use to Ensure That Their Ethics Offices Are Independent



Source: Analysis of MWD, MTA, and L.A. Ethics Commission policies, as well as relevant local and state laws. Interviews with MWD, MTA, and L.A. Ethics Commission staff.

* The administrative code requires the ethics officer to retain an outside counsel or investigator to conduct investigations into alleged ethics violations by board members and other executive officers. However, the ethics office lacks the authority to contract with external counsel or otherwise obtain independent legal advice regarding its own investigations.

while MWD's administrative code requires the ethics officer to propose ethics rules in areas such as lobbying and conflicts of interest, it does not specifically identify who has the authority to interpret those rules. When we asked MWD's current ethics officer about this concern, he stated his opinion that the administrative code is procedural and not explicit about whether he has sole authority to interpret the rules. He also stated that he anticipated the lack of clear authority will be problematic in the future when deciding on controversial cases. In fact, unlike requirements of other equivalent officer-level positions, MWD's administrative code directs the ethics officer to work in a *collaborative manner* with the board and other officers. This ambiguity regarding the ethics officer's authority threatens the office's ability to reach independent determinations on potential rule violations, particularly in instances involving high-ranking employees or board members.

MWD's ethics office also lacks the authority to take specific actions to ensure that its work remains free from inappropriate influence. As Figure 8 shows, unlike the other agencies we reviewed, MWD's ethics office does not have unimpeded access to documentation it needs to conduct its investigations. Instead, the administrative code permits the general counsel to disagree with the ethics officer over access to documents, such as access to documents that may be privileged. If the disagreement cannot be resolved, the administrative code allows MWD's board, in some instances, to rule on the ethics office's access. Ethics office staff told us, and our own review indicated, that the general counsel's office has at times withheld documentation related to investigations. Such limitations undermine the independence of the ethics office's work, since best practices require that it have unimpeded access to information.

Unlike other comparable entities, MWD's ethics officer lacks the ability to obtain independent legal advice regarding the office's investigations.

MTA and the L.A. Ethics Commission also have the authority to employ or contract with their own legal counsel, while MWD's ethics officer lacks the ability to obtain independent legal advice regarding the office's investigations. Recent revisions to MWD's administrative code require the ethics officer to retain an outside counsel or investigator to conduct investigations into alleged ethics violations by board members and other executive officers. However, the ethics officer lacks the authority to contract with external counsel or otherwise obtain legal advice regarding its own investigations. Instead, the ethics office must rely on MWD's general counsel for legal advice, even when the general counsel may have conflicting professional interests or obligations. This situation might arise when an employee under investigation for violating ethics rules has filed or threatened to file legal action against MWD. In such a scenario, the general counsel's office would be the only source of legal advice to the ethics office while simultaneously being responsible for limiting MWD's legal and financial liability—priorities that may directly conflict with one another. In fact, the

general counsel's involvement in ethics office investigations more broadly raises additional concerns regarding the ethics office's independence. Until MWD's board approved revisions to the ethics office's investigation procedures in November 2021, those procedures allowed the general counsel to rule on the ethics office's jurisdiction in some cases and required the general counsel to review all ethics office investigations before they were finalized. Our review of ethics office investigations, discussed below, found that the lack of structural independence has the potential to undermine the ethics office's work.

We found other weaknesses in the ethics office's investigation process that, in addition to affecting its independence, reduce its broader ability to operate effectively. For example, our 2004 audit recommended that MWD develop formal written policies and procedures regarding how investigations are to be conducted. Although the ethics office revised its investigation procedures and formalized them by having them approved by the board and placed in the administrative code in November 2021, these procedures still lack necessary detail. For example, although the new procedures updated the ethics office's investigation time frames and implemented a requirement in state law to adopt a schedule of penalties for violating ethics rules, they still do not clarify what types of outside involvement in cases—such as from members of the board or the general counsel—are inappropriate.

We found weaknesses in the ethics office's investigation process that, in addition to affecting its independence, reduce its broader ability to operate effectively.

The one area where MWD's new procedures represent an improvement to its processes is in formalizing due process considerations, such as affording subjects the chance to review the final investigation report. Overall, however, MWD's slow and incomplete progress in these areas is troubling and, as we describe below, has directly affected the office's ability to independently investigate potential ethics violations in the recent past.

MWD Management Inappropriately Interfered in the Ethics Office's Work on Two Important Cases

Our review of the ethics office identified instances of interference by high-ranking MWD officials in two cases that occurred in 2017, and the opportunity for additional interference still exists. Specifically, in reviewing the ethics office's case log, we noted evidence of threats to the ethics office's independence regarding a case in 2017. In evaluating this case, we learned of another case in 2017 with similar threats to independence. Because much of the documentation detailing the circumstances of these cases is protected by attorney-client privilege—and because MWD has declined to waive the privileged status of these documents despite our request that it do so—we cannot discuss some aspects of the

interference in detail. Nonetheless, our review found that contrary to principles in state law that require the ethics office to operate independently and free from political influence, weaknesses in the structure of MWD's ethics office allowed the general counsel and the former chair of MWD's board (former chair) to inappropriately interfere with and influence the ethics office's work.

In one case, MWD's former ethics officer received a complaint from the former chair asking for a determination of whether one or more board members had inappropriately released an attorney-client privileged email to a newspaper's attorney. Although the general counsel was directly involved in this situation as the party who wrote the leaked email, the former chair requested the ethics officer to interview the general counsel for the background circumstances regarding the complaint. As a result of the interview, the ethics officer became aware of an additional potential ethics violation that one of the board members may have committed. The ethics officer reviewed both allegations and determined that there was not enough evidence to pursue a full investigation. In response, the former chair and general counsel involved themselves heavily in ways we cannot discuss in this report, creating the appearance that they sought to change the ethics officer's conclusion.

The second case we reviewed involved one of the same board members who was associated with the case described above. This second case investigated whether an MWD manager misled board members, including one discussed in the previous case, about the status of a project during two public board committee meetings. The former ethics officer's initial report concluded that the manager had made misleading statements to the board in violation of MWD's ethics rules. Thereafter, the manager's attorney sent a letter to MWD's former chair criticizing the investigation—including the length of time it took the ethics office to conduct it—and requesting that the former chair prevent the ethics officer from posting or publicizing her report until the attorney's concerns could be resolved. Although the investigation took longer than allotted for investigations in the ethics office's guidelines at the time, our review of the office's report and supporting documentation led us to conclude that the ethics officer had a reasonable basis for the conclusions she reached. Nonetheless, confidential documentation revealed that after receiving the letter from the accused manager's attorney, MWD's former chair and general counsel took actions that constitute inappropriate interference into the ethics office's work, resulting in the ethics officer ultimately withdrawing her finding that the manager had violated MWD's ethics rules.

This second case also highlights the importance of ensuring that the ethics officer has sole authority to interpret ethics rules. According to the ethics officer, the decision to withdraw the finding resulted

from a disagreement with the general counsel over how to interpret the ethics rule that the manager allegedly violated. Given both that the purpose of the ethics office is to independently investigate violations of its rules and that the ethics officer wrote the rule in question, we find it troubling that members of MWD's management were able to involve themselves and influence the final disposition of the case by disputing the interpretation of the rule.

Furthermore, because of the general counsel's obligation to protect MWD from liability, certain actions she took regarding this second case constitute inappropriate interference. MWD's procedures at the time of this case required the ethics officer to file a preliminary report of findings with the general counsel for review. During this case, the general counsel provided feedback through a series of memos. Although the confidentiality of the memos prevents us from going into detail about our specific concerns, our review of the memos indicates that the general counsel's feedback—along with other actions the general counsel took during the investigation—created, at a minimum, the appearance that the feedback was intended to influence the outcome of the case, as opposed to offering objective and constructive legal advice. We understand the value of a legal review regarding the sensitive matters the ethics office investigates. What raises concerns, however, is the general counsel's role in influencing the outcome given her professional interest in protecting MWD from potential legal action. Complicating matters further, the former ethics officer was forced to rely solely on the general counsel's feedback because, as explained earlier, MWD does not allow the ethics office to hire or contract with independent counsel for legal advice regarding ethics office investigations.

These two cases highlight the importance of establishing and following formalized practices for insulating the ethics office from interference during investigations. Although we did not see evidence suggesting that this sort of interference is widespread, any amount of actual or perceived interference in cases involving high-ranking members of MWD's management undermines the ethics office's ability to independently investigate violations of ethics rules.

MWD Appears Unwilling to Strengthen Its Ethics Office

Despite the importance of the legal requirement that MWD have an independent ethics office, MWD's leadership has demonstrated a persistent unwillingness to ensure that the ethics office has the necessary resources and authority to operate independently. Shortly after the 2017 cases we discuss above, MWD's former chair initiated a review of the ethics office's policies and processes by an external

legal firm. The circumstances of this review raise further questions about the ethics office's independence and authority. In July 2017, the former chair requested that the general manager contract with a law firm to conduct the review, opting not to bring the issue to the full board for discussion or a vote. When we asked the former chair about this decision, he confirmed that he made the decision to hire outside legal counsel to perform the review. He also referred us to a public board meeting in June 2017 during which, citing concerns with recent ethics office investigations, he announced his creation of an ad hoc subcommittee to review the ethics office and mentioned that he anticipated the subcommittee would use outside legal counsel during the process. In contrast, a member of that subcommittee told us the subcommittee was responsible for the decision to contract with the firm. The former chair could not provide, and we could not identify, reliable evidence documenting the subcommittee's role or the actions it took related to the initiation of the external review. Therefore, the decision by MWD's management to initiate the review was not sufficiently transparent or accountable.

Other aspects of the external review also raise questions about MWD's commitment to an independent ethics office. Three members of the ethics office who still work in the office told us that they were not consulted about the nature and timing of the review and stated that they only learned of the review after the former chair's public announcement at a board meeting that he had decided to commission the review. Further, while the external review was still ongoing, MWD's ethics officer announced her resignation at a board meeting in September 2017. Her resignation letter stated that she was no longer able to reconcile her contractual obligations to fulfill legally mandated requirements of the ethics officer position with the board's apparent expectations.

Actions by MWD's board of directors leading up to the ethics officer's resignation, as well as since that time, indicate that some members of the board may not have respected or fully understood the role the ethics officer is required by state law to fulfill. Board documentation indicates that at the same meeting where the ethics officer announced her resignation, the board planned to discuss performance evaluations of department heads, including the ethics officer. Although the confidentiality of anonymous comments submitted by board members as part of this planned discussion prevents us from describing those comments in detail, they reveal some misunderstandings of the ethics officer's responsibilities under state law.

Other developments since 2017 demonstrate continued threats to the ethics office's independence. Following the ethics officer's resignation, MWD continued revising the ethics office's processes

with insufficient involvement by ethics office staff. Near the completion of the first external review of the ethics office, MWD contracted with a different law firm in January 2018 to assist in proposing revisions to the ethics provisions of MWD's administrative code. However, despite the requirement in state law that the ethics office be responsible for adopting ethics rules for approval by the board, ethics office staff did not independently draft these latest revisions. Instead, board documentation shows that the law firm assisting with the revisions was directly responsible for ethics rule revisions adopted by the board and that the firm collaborated not only with ethics office staff but also with MWD's general counsel. In fact, when asked about this process, ethics office staff stated that based on how the review unfolded, they felt that staff from the law firm and the general counsel's office would not support some specific revisions to strengthen the independence of the ethics office, such as administrative code provisions allowing the ethics office to have unfettered access to documentation, addressing potential conflicts from the legal department, and establishing the office's ability to have legal counsel apart from the general counsel's office. MWD's board adopted significant ethics-related revisions to its administrative code in November 2021. Although these revisions include certain improvements—including the due process considerations we discuss above—they fail to incorporate several best practices. In fact, circumstances ongoing at the time of our review, which we cannot discuss because they are confidential, demonstrate that the ethics office's role is as uncertain as ever.

Based on our review, we believe achieving a more effective ethics office will require intervention by the Legislature.

Based on our review, we believe achieving a more effective ethics office will require intervention by the Legislature. MWD has failed to comply with state law requirements for an independent ethics office since at least 2004, and it has not implemented key recommendations from our previous report, despite stating that it would do so. MWD also has not adopted best practices to strengthen the ethics office. Moreover, actions by MWD's leadership indicate that it does not respect or, at best, misunderstands the role and legal requirements of its ethics office and is unwilling to make real change. As a result, meaningful improvement will require the Legislature to amend state law to further specify requirements as well as take action to hold MWD accountable for implementing those requirements.

Employees Living in Aging MWD Housing Face Maintenance Delays and Uncertainty About Long-Term Solutions

Although MWD has known for years about significant concerns affecting employee housing—which is occupied by employees who perform critical work—it has not prioritized addressing those problems. Many houses are in poor condition and suffer

from habitability issues that could affect employee safety, including insufficient air conditioning, high levels of lead and asbestos, and excessively hot water. Yet MWD has struggled to respond in a timely way to serious maintenance concerns and to find a timely and comprehensive longer-term solution to its housing issues.

MWD Must Improve Its Processes for Responding to Maintenance Requests

Many of MWD's employee housing units suffer from issues that threaten both the safety and quality of life of the employees who reside in this housing. As we discuss in the Introduction, some MWD employees' job responsibilities require that they live on-site while on duty. MWD currently has about 100 employee houses at these remote worksites, most of which were originally constructed in the 1940s or 1950s. MWD completed two assessments of its employee housing in recent years—one in 2016 and the other in 2019. Both assessments identified issues, some serious, with every house inspected. For example, during the 2016 assessment, an inspector discovered what would turn out to be a sewage leak in the crawl space of a house. Additionally, the assessments noted that some of the houses required complete replacements of roofs, electrical systems, or plumbing systems. Both assessments recommended that MWD significantly renovate its employee housing and demolish specific unsalvageable housing units. Although some houses were in better condition than others, every house reviewed required at least some level of renovation. Lastly, we directly observed several employee housing units during our audit, and although we entered only unoccupied houses out of respect for residents' privacy, we noted that these houses—and the pumping plants' residential areas more generally—appeared to be aging and in need of attention.

Furthermore, MWD has detected lead or asbestos (or both) in every house it has inspected for these hazards—about 36 percent of all houses at the time of our review—and some employees are currently residing in houses where MWD has detected these hazards. These employees are informed of the specific areas containing these hazards and must sign a document stating that they acknowledge these hazards before they occupy the house. Although the levels of lead and asbestos hazards that MWD has measured vary from house to house, it is troubling that MWD has not comprehensively examined every housing unit for lead and asbestos hazards. At the time the housing was built, it was common for housing materials to contain lead and asbestos; it is therefore likely that many of the housing units that MWD has not inspected also contain lead and asbestos hazards. As we explain in the next section, MWD's long-term plan for employee housing will likely solve this issue through the complete replacement of its older employee housing, but that replacement project is years away from completion.

We spoke with 12 MWD employees who currently live in employee housing, and although the nature and seriousness of their concerns varied, 10 expressed frustration with MWD's handling of employee housing, including how long it takes MWD to respond to and resolve their problems. For example, one employee was generally satisfied with his employee housing but had begun to perform maintenance himself because of MWD's poor response time. However, other employees' concerns are more serious and pose safety risks to them and their families. For example, several employees described inadequate responses from MWD when requesting assistance for broken air conditioner units, an item critical to safety and quality of life at the pumping plants, where temperatures can exceed 110 degrees Fahrenheit in the summer. One employee publicly testified to MWD's board in September 2021 that excessively hot water was coming from his house's water tap and would reach a temperature of up to 115 degrees during the summer, which he believed posed a burn risk to his family. Although this employee had informed MWD management responsible for housing of this issue in the summer of 2020, MWD did not provide the employee with a solution—a water chiller—until after the employee testified to the board a year later.

Given its awareness of the issues with its houses, we expected MWD to have prioritized responding to maintenance requests. However, our analysis determined that it has not done so. For example, following the first assessment in 2016, MWD failed to respond promptly to items that may have required immediate attention, such as the house with a broken sewer pipe mentioned above. Instead, staff in the WSO group—which was responsible for housing at the time—initially skimmed the assessments and failed to notice that some houses had serious issues that required immediate action. In fact, MWD was not aware of some of these issues until the bargaining unit representing many of the employee residents obtained the assessments, which MWD did not provide until three months after the bargaining unit requested them. The bargaining unit's review identified six occupied houses with immediate maintenance concerns and alerted MWD. Within a day, MWD had begun repairs, but it is troubling that it took several months and intervention by the bargaining unit before MWD began taking action to address these safety issues.

MWD also has not demonstrated that it has improved its response to housing issues since the 2016 assessments. Although management in MWD's Real Property section—which took over responsibility for employee housing from the WSO group in 2018—provided process documents intended to guide its staff in prioritizing and responding to maintenance requests, the documents lack necessary detail. For example, although one process document indicates that the Real Property section will respond to maintenance requests that threaten

the health or safety of a resident within 24 hours, it does not list what scenarios fall into this category or how staff should make this determination. It is therefore unclear whether a given issue—such as the one involving excessively hot water noted above—will trigger a timely response from the Real Property section.

Further, although MWD maintains data on maintenance requests, we concluded that we cannot rely on these data to determine how long it takes MWD to resolve the requests. Therefore, we were unable to evaluate how quickly MWD did so. Nonetheless, as discussed above, emails and maintenance requests that residents provided to us suggest that it can take MWD months or even years to resolve key issues. When we asked MWD's Real Property section manager about its efforts to respond to maintenance requests, she indicated that MWD's practice is to evaluate whether other residents are having the same issue as the one described in the request because, if they are, it can be more efficient to fix the issue at all houses, which can take additional time. However, because this balancing exercise can add significant delays, and because some requests involve potential threats to employees' safety, MWD must improve upon the timeliness, transparency, and accountability of its current process.

To properly respond to maintenance requests submitted by employees—especially requests about issues that may pose a risk to safety or livability—MWD needs to establish clear criteria by which it can prioritize its response as well as reliable data with which it can hold itself accountable. These efforts will provide a short-term solution to MWD's more immediate issues with employee housing while it works on its long-term housing plan, an effort we discuss in the next section. Regardless of the remote nature of MWD's pumping plants and the challenges their locations might pose to response times, MWD has a legal and ethical obligation as these employees' landlord to ensure that the housing it provides is habitable. The critical nature of the work these employees perform—helping provide a large portion of the drinking water used by 19 million Californians each day—underscores the importance of this responsibility.

MWD Has Struggled to Reach a Long-Term Solution to Its Housing Issues

MWD has been slow to address the long-term challenges affecting its housing. Figure 9 depicts the actions it has taken since 2015 and shows that MWD has not made significant progress toward a comprehensive solution. As we discuss above, the 2016 housing assessments recommended significant renovations for all of the MWD housing units that were assessed. Instead of carrying out these extensive renovations, in May 2017 MWD began a trial

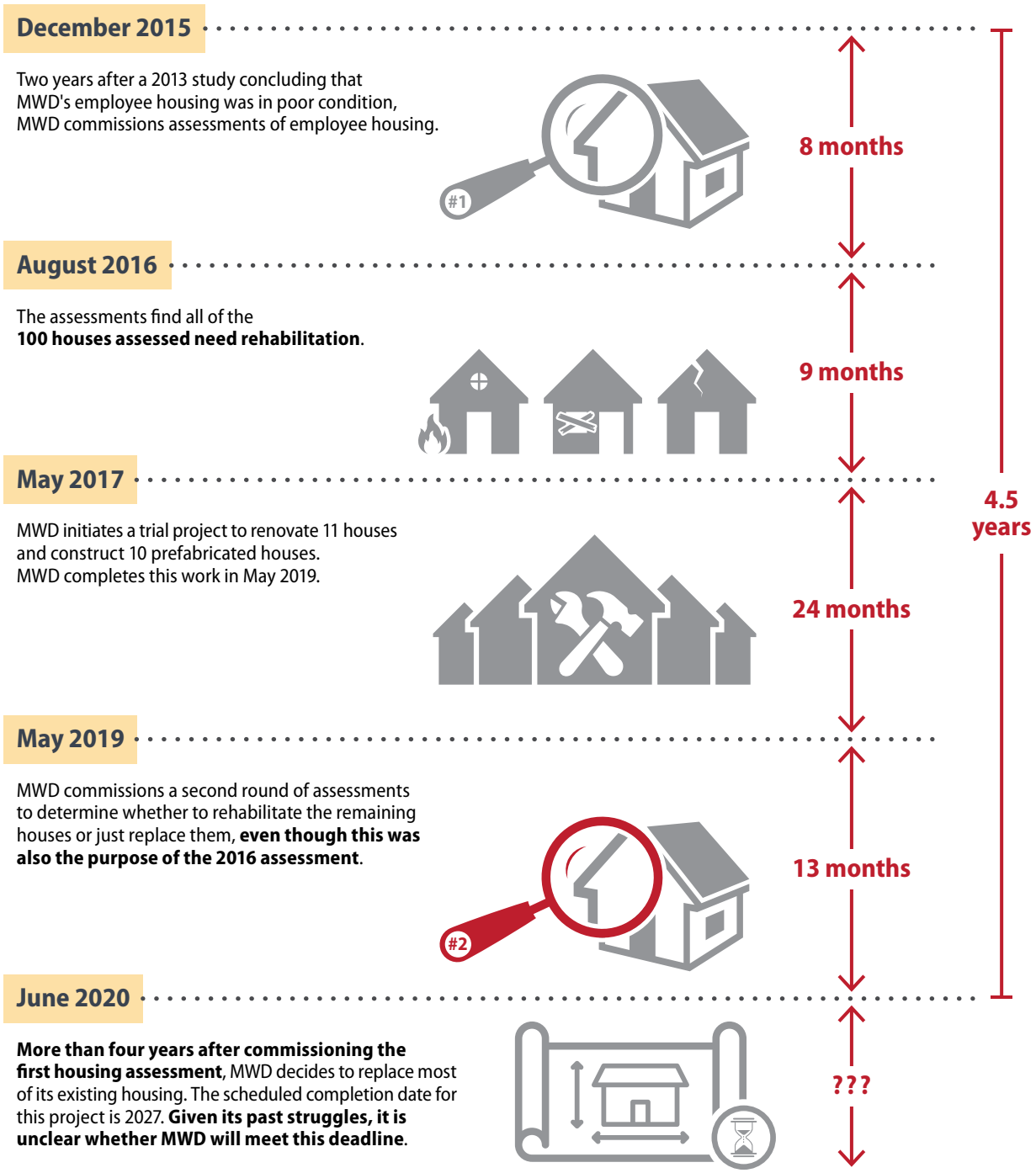
project in which it renovated 11 houses and constructed another 10 prefabricated homes over the next two years, as Figure 9 shows. When we asked MWD about the length of time it took to complete the project, the manager responsible for overseeing the work stated that the remote location resulted in logistical difficulties, such as finding vendors to bid on the projects. The manager also explained that the pilot project was intended to determine the most cost-effective solution to address issues noted by the assessments, and which solution, such as renovating existing homes or replacing them with prefabricated homes, worked better for those living in the employee housing.

However, MWD did not pursue a solution after the pilot project ended. Instead, after Real Property took over from the WSO group in September 2018, MWD commissioned a second round of housing assessments that were conducted in 2019. The stated purpose of these assessments was essentially the same as for the 2016 assessment—to determine whether to replace or renovate the remaining houses. When we asked Real Property section managers why the second assessment was necessary, they claimed that the first assessment was intended to identify immediate maintenance items that needed fixing. However, this description is inconsistent with what the people actually responsible for the 2016 assessment told us. Further, as we discuss above, MWD did not use the 2016 assessment to find and address specific maintenance issues. Therefore, it remains unclear why the second assessment was necessary, and we question whether the time it took to complete it was well spent. Based on the 2019 assessments, the Real Property section recommended to MWD's board in June 2020 that its housing units be completely replaced, except for those houses renovated or constructed as part of the pilot project described above. Real Property has since proceeded with preliminary steps for completely replacing the employee housing, and MWD's board has authorized the funding required for these efforts. The project has a current estimated cost of $146 million and will be completed in 2027—more than 10 years after MWD became aware of widespread issues with its housing.

MWD's current approach to replacing the remaining houses, and its failure to act sooner, means that many employees will continue to live in housing units that may pose a risk to their health and quality of life. Given the age and poor condition of most housing units, completely replacing them will likely solve many issues, such as the presence of lead and asbestos. However, because MWD has known about these issues since at least 2016, we believe it should have prioritized the safety and comfort of its employees by committing to a comprehensive solution much sooner. Further, given the current state of many houses and MWD's slow progress, MWD must not ask its employees to face further delays for a long-term solution.

MWD should have prioritized the safety and comfort of its employees by committing to a comprehensive solution to its housing much sooner.

Figure 9
Despite Commissioning Two Housing Assessments, MWD Has Not Resolved Housing Concerns in a Timely Fashion



Source: Analysis of MWD housing records.

Therefore, even as MWD improves its efforts to address housing concerns raised by employees, it must also develop a contingency plan that it can implement if its program to replace most of its homes faces further delays. Such a plan could include an option to acquire additional prefabricated housing units or to renovate additional units.

Although Its Safety Program Generally Adheres to State Law, MWD Could Strengthen Its Safety Policies

MWD's safety policies generally conform to state law, and our review indicates that it responds adequately to safety incidents when they occur. We reviewed a selection of MWD's safety policies—including its injury-reporting procedure as well as its policies for personal protective equipment (PPE) and working on roads and streets—and found that these policies generally meet requirements in state law—specifically, those required by California Division of Occupational Safety and Health (Cal/OSHA) regulations. For example, MWD's injury-reporting procedure generally establishes protocols required by Cal/OSHA for reporting safety concerns, including a process for employees and their representatives to access injury and illness records. Similarly, MWD's PPE policy meets Cal/OSHA requirements, and the employees we spoke with stated that they had been able to obtain adequate PPE when they needed it. Further, MWD's Injury and Illness Prevention Program (IIPP) meets the minimum requirements established by the Cal/OSHA regulations that we reviewed. For instance, MWD's IIPP includes methods for correcting unsafe or unhealthy conditions, which we confirmed in part through our conversations with a selection of safety representatives, all of whom stated that they felt empowered to halt unsafe work conditions if needed. Lastly, we reviewed a selection of MWD's safety training programs, including those for hazardous waste operations and emergency response (HAZWOPER) and respiratory training, and found that MWD's training programs generally complied with regulatory requirements.

Further, our review indicates that MWD generally follows Cal/OSHA regulations and its own policies when responding to safety incidents. We reviewed a database containing all of MWD's internally reported safety incidents from January 2017 to October 2021 and did not note any patterns that raised concerns, such as repeated instances of a particular type of injury or a disproportionate number of injuries for a single work area. We selected 20 safety incidents to review further and found that MWD's response to these incidents generally followed Cal/OSHA regulations as well as MWD's internal processes. Generally speaking, for each incident we reviewed, a safety representative interviewed the staff involved and implemented corrective action based on the nature of the incident.

Although MWD's safety program generally aligns with state laws, we identified opportunities for policy improvements.

Although MWD's safety program generally aligns with state laws, we did identify opportunities for policy improvements. One such area involves ensuring adequate collaboration between management and safety staff. As explained in the Introduction, the Operational Safety and Regulatory Services (SRS) section, which is part of the larger WSO group, creates and enforces MWD's safety policies. In doing so, representatives of the SRS section (safety representatives) work on-site at various MWD facilities to advise management and staff on everyday safety practices as well as protocols for planned projects.

However, MWD's safety policies do not require a minimum level of collaboration between management and safety representatives, creating the risk that management may not be adequately aware of safety concerns. Managers are responsible for reinforcing safe work practices, instructing employees on safety procedures, and providing safety leadership. However, despite the overlap between the managers' responsibilities and the SRS staff's role as a safety resource, the only collaboration requirement in MWD policy is that the two parties consult during the planning stages of upcoming projects. There is neither a requirement for routine collaboration nor guidance on how frequently SRS staff should be present at field sites where potentially dangerous work is taking place. As a result, managers may be unaware of prevalent safety concerns. We spoke to several safety representatives who work at a variety of MWD sites. Although the representatives consistently expressed the importance of meeting regularly with management, their descriptions of how often they actually did so varied by worksite. We believe that requiring more consistent collaboration and communication would be a valuable tool for ensuring workplace safety.

Similarly, although MWD's policies state that managers are responsible for providing a work environment that encourages open communication of health and safety issues without fear of reprisal, the policies do not define retaliation or create a process for responding to allegations of retaliation. MWD does have a confidential hotline for reporting safety issues, which may help employees who are not comfortable reporting these safety issues to their managers. However, as with the EEO policy we discuss in Chapter 1, MWD's safety policies do not define retaliation, and MWD does not have safety training specifically on retaliation. Moreover, MWD's safety policies do not explain where employees should report retaliation concerns. Further, our audit team spoke with some employees who shared their belief that MWD retaliates against employees for reporting safety concerns. Although our review did not find concrete examples or evidence of retaliation against MWD employees who report safety concerns, it is unclear whether that fact signals a genuine absence of retaliation.

MWD's safety policies could therefore be strengthened by clearly articulating who is responsible for responding to retaliation concerns and listing clear steps managers and staff can take if they suspect retaliation.

Please refer to the section beginning on page 5 to find the recommendations that we have made as a result of these audit findings.

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Other Areas We Reviewed

To address all of the audit objectives approved by the Joint Legislative Audit Committee (Audit Committee), we also reviewed the subject areas described below.

Although MWD Is Not Required to Comply With Hazardous Waste Regulations, Its Policies and Trainings Generally Do So

State law and Cal/OSHA regulations establish requirements for HAZWOPER. However, these regulations apply only to operations that MWD does not conduct. MWD's health and safety team manager confirmed that because MWD does not operate hazardous waste treatment, storage, or disposal facilities, and because MWD does not conduct emergency response operations for releases of hazardous waste, its operations do not fall under the HAZWOPER regulations' scope. However, MWD's safety policies and HAZWOPER trainings generally meet the Cal/OSHA HAZWOPER requirements. For example, MWD's policies specify that external hazardous waste management responders, such as fire departments, will handle the emergency response to hazardous waste spills. However, MWD provides training to some employees that is consistent with Cal/OSHA's HAZWOPER training requirements. MWD provides this training to allow its staff to assist emergency responders in case of a substantial spill. Similarly, MWD's chemical response program and other hazardous waste policies comply with the requirements outlined by the HAZWOPER regulations, including the establishment of procedures for decontaminating locations or equipment exposed to hazardous waste.

MWD's EEO Training Generally Complies With Legal Requirements

State law requires MWD, like all employers with five or more employees, to provide training on sexual harassment and abusive conduct (bullying) to its employees. Supervisors must take at least two hours of the training, and nonsupervisory employees at least one hour, every two years. In 2017, the Legislature updated the requirements for the training's subject matter to include harassment based on gender expression, sexual orientation, and gender identity. DFEH regulations provide details on the content required for that training, which includes practical examples of harassment, how to report complaints, and the complaint investigation process.

Although MWD's training covers most of the topics required by regulation, it does not cover everything. MWD's training—provided by a consultant—does not guide supervisors in how to respond if they are personally accused of harassment. State regulation also

requires MWD to keep records of its employees' completion of the trainings. These records indicate that, as of January 2022, 83 percent of its employees had completed their required training on time—meaning that the training for over 300 employees was out of date. MWD's EEO manager explained that when employees do not complete the training within 30 days after the training is assigned to them, she follows up with them to make sure that they complete it.

In December 2020, MWD also began including a training module on unconscious bias. MWD provides this training to all employees, and it covers topics including bias, stereotyping, and inclusion. However, this training is not directed at managers and does not address the hiring or interview processes we discuss in Chapter 2.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



MICHAEL S. TILDEN, CPA
Acting California State Auditor

Date: April 21, 2022

Appendix A

MWD Has Failed to Fully Implement Several Recommendations From Our 2004 Audit

In 2004, our office audited MWD and reviewed, among other areas, the district's ethics office and personnel policies. That audit report made a number of recommendations for addressing several deficiencies noted in both areas, and the chair of MWD's board at the time committed to implementing all but two of the recommendations. When the Audit Committee approved this current audit in 2021, it directed our office to evaluate the status of those recommendations from the 2004 audit related to MWD's ethics office and personnel policies. Table A presents the results of our evaluation of MWD's efforts to implement these recommendations.

Table A
Implementation Status of 2003-136 Audit Recommendations

	RECOMMENDATION NUMBER	2003-136 AUDIT RECOMMENDATION	IMPLEMENTATION STATUS
ETHICS OFFICE	1	MWD should complete the implementation of its new ethics office and ensure that it complies with requirements in state law.	Not implemented
	2	MWD should continue its recent efforts to inform district employees about the ethics office and its functions.	Implemented
	3	MWD should develop formal written policies and procedures regarding how investigations are to be conducted, and under what circumstances an external investigator will be hired.	Partially Implemented
	4	MWD should review the ethics policies in the administrative code and in the operating policy and ensure that it presents ethics policies consistently.	Not implemented
	5	Once it hires a permanent ethics officer, MWD should ensure that he or she reports directly to the entire board, both verbally and in writing, in addition to the ethics subcommittee to ensure the fullest visibility of ethics issues.	Implemented
	6	MWD should establish a reliable process for ensuring that all employees in designated positions submit statements of economic interest.	Implemented
	7	MWD should issue an annual report to the public and interested legislators, such as those representing the areas served by the district, on its ethics office's compliance with state law.	Partially Implemented
PERSONNEL POLICIES	1	To ensure consistent hiring practices, MWD should develop comprehensive and current policies and procedures for hiring, including:	
	1a	• Consolidate policies and procedures into a single human resources policies and procedures manual.	Not implemented
	1b	• Ensure that policies and procedures fully address the potential for favoritism or the appearance of favoritism.	Not implemented
	1c	• Work to resolve all disagreements with bargaining units over the existence of management bulletins.	Implemented
	1d	• Update job descriptions to ensure that they are accurate and current.	Partially implemented
	2	MWD should work with recruiters to ensure that it has established a reasonable time frame for completing recruitments, including those involving external applicant pools.	Not implemented
	3	MWD should ensure that it follows its hiring policies and maintains written documentation that it did so.	Not implemented
	4	MWD should develop comprehensive policies and procedures for promotions, including steps to ensure that it documents reasonable justification for all promotional decisions.	Partially Implemented
	5	MWD should amend its grievance policy to require the establishment of time frames for resolving substantiated grievances.	Not implemented
	6	MWD should review and update all its policies and procedures periodically and develop a policy for communicating revisions to staff.	Not implemented
	7	MWD should provide a listing of separation agreements to the entire board, including the cost of all agreements. In addition, the board should establish a consistent policy for its approval of these agreements and should require the district to disclose all separation agreements to the full board.	Not implemented

Source: Analysis of MWD's ethics and personnel policies and procedures, including those in its administrative code.

Appendix B

Employee Settlement Agreements With NDAs Result From a Variety of EEO Issues

The Audit Committee directed the California State Auditor's Office (State Auditor) to identify the total number of NDAs that MWD has entered into since 2004 and the types of employee issues such agreements involved. Table B provides, for the 29 NDAs we identified that were related to EEO issues, the EEO-related circumstances leading to each settlement.

Table B
NDAs by Type of EEO Issue

		DISCRIMINATION BASED ON						
SETTLEMENT NUMBER	RETALIATION	DISABILITY	SEX/GENDER	NATIONAL ORIGIN/ ANCESTRY	RACE/COLOR	AGE	RELIGION	SEXUAL HARASSMENT
1	X			X	X			
2		X						
3	X	X						
4	X	X		X	X			
5	X				X			
6	X	X			X	X		
7	X	X						
8	X					X		X
9				X	X	X		
10	X							X
11	X			X		X		
12	X				X	X		
13	X							
14	X		X		X			
15	X				X			
16	X							
17	X	X						
18			X					
19			X	X		X		
20	X		X					
21	X		X					X
22	X			X	X			
23	X	X			X			
24	X		X					X
25	X				X	X		
26	X		X					X
27	X	X	X					
28	X	X					X	
29	X							

Source: Court documents, and MWD's EEO logs and case files.

Appendix C

Scope and Methodology

The Audit Committee directed the State Auditor to conduct an audit of MWD's personnel processes. Table C lists the objectives that the Audit Committee approved and the methods we used to address them.

Table C
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit.	Reviewed relevant state and federal laws and regulations related to MWD's personnel processes, such as its EEO and hiring processes. Reviewed state laws and regulations relevant to workplace safety, landlord obligations, and MWD's ethics office.
2	Evaluate MWD's efforts to implement various State Auditor recommendations related to its ethics office and personnel policies. Determine whether MWD fulfilled the commitments it made in response to those recommendations.	• Reviewed MWD's responses to relevant recommendations in audit report 2003-136. • As part of evaluating whether MWD implemented those recommendations, evaluated the structure and processes of MWD's ethics office, including whether it complies with state law. • Evaluated cases handled by MWD's ethics office to determine whether the office independently investigated those cases. • Reviewed MWD's policies, procedures, and practices related to hiring and promotions to determine whether MWD has implemented or strengthened those policies, procedures, and processes.
3	To the extent possible, analyze MWD's current personnel policies and practices related to recruiting, job posting, examinations, promotions, transfers, and conducting employee evaluations. Specifically, evaluate whether MWD has put measures in place to ensure equal employment opportunity with specific regard to gender and LGBTQ+ status and identify what, if any, barriers to equal employment opportunity exist.	• Reviewed the policies and procedures described under Objective 2 as well as relevant provisions in MWD's administrative code and its contracts with is bargaining units that cover employee transfers and evaluations. Determined whether MWD has implemented steps to prevent bias or discrimination in its hiring and promotion processes. • Reviewed reports and independently analyzed data related to the demographics of MWD's workforce and its applicant pool. • Assessed whether MWD has taken sufficient steps, including those required by law, in response to demographic trends indicated by its workforce and hiring data.
4	Evaluate MWD's process for notifying employees and union representatives regarding changes to operating and personnel policies and procedures, including the following:	
	a. Changes to job descriptions and postings.	• Determined that MWD has no formal process for communicating policy changes to employees. • Reviewed a selection of policy and procedure changes, including changes related to EEO policy and procedures, hiring and promotions policies and procedures, and MWD's safety program, to determine whether and to whom MWD communicated those changes.
	b. Changes to its EEO and workplace bullying complaint process. Determine whether MWD has assigned a contact person for such complaints.	
	c. Changes to safety protocols and its Illness and Injury Prevention Program.	

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
5	Determine whether MWD has established adequate policies and procedures to train employees on EEO, sexual harassment, workplace bullying, and safety, including Hazardous Waste Operations and Emergency Response (HAZWOPER) protocols.	• Evaluated the content of MWD's EEO, sexual harassment, and bullying trainings to assess whether the trainings comply with state law. • Reviewed a selection of MWD's trainings related to components of its overall safety program, such as its HAZWOPER program, to determine whether training materials are consistent with any applicable legal requirements. • Reviewed MWD's processes for ensuring that employees take EEO, sexual harassment, and safety training in a timely fashion, as required by law or MWD policy.
6	Evaluate MWD's policies and practices for handling EEO complaints—including complaints of sexual harassment—and workplace bullying complaints, by doing the following:	
	a. Determine the total number of EEO and workplace bullying complaints filed since 2004.	• Evaluated MWD's policies and procedures for collecting, recording, referring, and tracking EEO and harassment complaints, including complaints involving abusive conduct. • Reviewed logs of filed complaints maintained by MWD's EEO office. • Reviewed reports and other documentation about complaints employees filed with MWD's ethics office. Determined whether and when the ethics office referred the complaints to the EEO office as required by MWD policy. • Obtained reports from DFEH and the EEOC to determine the number of EEO complaints MWD employees filed directly with those agencies. • Reviewed EEO and legal files to identify any complaints not captured by any of the above sources.
	b. Review a sample of EEO and workplace bullying complaints filed since 2004 to determine what process MWD officials used to handle complaints and the results of that process, including disciplinary actions.	• Reviewed MWD's policies and procedures for receiving and investigating EEO and other harassment complaints, as well as for communicating the results of those investigations to complainants and respondents. • Reviewed MWD's policies for EEO and harassment issues, such as its retaliation policy. • For a selection of 28 EEO complaints since 2004, reviewed documentation retained by the EEO office, other human resources staff, and the general counsel's office to determine the timeliness and quality of MWD's handling of the complaint, as well as the resolution of the complaint. • For the cases among the 28 in which MWD substantiated EEO violations, identified any disciplinary actions MWD took in response. To the extent possible, determined whether the application of those disciplinary actions was appropriate and consistent. • For the 28 cases, interviewed EEO and human resources staff to get their perspective on the handling of the cases. In some instances, interviewed complainants for their perspective.
	c. To the extent possible, determine whether MWD officials retaliated against any individuals who filed EEO or workplace bullying complaints.	• Reviewed and evaluated MWD's retaliation policy and relevant best practices. • Among the 28 cases reviewed under Objective 6(b), reviewed formal retaliation complaints and MWD's handling of those complaints, including any disciplinary action MWD took. For the 28 cases, identified any concerns about the treatment of complainants or the conduct of other employees involved in the investigations. Determined what MWD did to prevent or address this behavior.

	AUDIT OBJECTIVE	METHOD
7	To the extent possible, assess MWD's policies and practices regarding nondisclosure agreements (NDAs) in situations involving EEO complaints, sexual harassment, workplace bullying, and related issues by doing the following:	
	a. Determine whether MWD officials have taken adequate steps to implement Code of Civil Procedure (section 1001) related to NDAs.	• Requested from MWD all settlement agreements MWD has entered into with employees resulting from or related to EEO or harassment-related complaints or issues. • Reviewed MWD's EEO records, personnel files, and risk management data, as well as publicly available legal documents, to attempt to determine the total number of such settlements. • Reviewed all settlement agreements we identified that were subject to section 1001 to determine whether any of those agreements violated state law. • Interviewed MWD's general counsel about MWD's plans to implement recent changes to section 1001.
	b. Identify the total number of NDAs MWD has entered into since 2004 and what types of employee issues such agreements involve.	• Reviewed all of the settlement agreements identified under Objective 7(a) to determine whether they contain NDAs. • Analyzed court documents, complaint records from DFEH and the EEOC, settlement agreements, and MWD's EEO files to determine the EEO-related circumstances leading to each NDA.
	c. Determine whether MWD has considered releasing signatories of NDAs entered into prior to 2017 from their nondisclosure obligations.	• Asked MWD's general counsel whether MWD would release signatories of NDAs.
8	To the extent possible, evaluate MWD's policies and practices for reporting settlement agreements for employee complaints to the board, including the legal department's policies and practices for reporting such agreements to the board's Organization, Personnel, and Technology Committee.	• Reviewed MWD's administrative code to identify the general counsel's obligations to report settlement agreements to the board. • Interviewed general counsel staff about their practices for this reporting. • For a selection of settlement agreements identified under Objective 7(a), determined whether the general counsel had reported the agreements to the board. As part of this review, assessed the amount of detail any reports to the board contained.
9	Evaluate MWD's safety program by doing the following:	
	a. Assess MWD's protocols for the reporting of safety incidents by employees and by supervisors and management employees to higher authorities within MWD. Determine how MWD manages and ensures the consistency of the variety of safety reporting protocols it uses.	• Reviewed MWD's administrative code, operating policies, and safety program procedures to identify the process for reporting safety incidents. • Interviewed employees in MWD's Operational Safety and Regulatory Services (SRS) section to determine MWD's process for consistently reporting safety incidents. • Reviewed a selection of safety incidents to determine whether MWD's response aligned with Cal/OSHA's requirements for employers as well as MWD's safety policies for reporting and responding to incidents.
	b. Identify the role of safety representatives at worksites and determine whether they are empowered to halt unsafe work or correct unsafe conditions.	• Interviewed staff in MWD's SRS section to determine the responsibilities of safety representatives and whether they have the authority to halt unsafe work. • Reviewed MWD's safety policies and procedures and interviewed safety managers to determine the role of safety representatives at worksites, including their relationships with operations managers and their ability to intervene in potentially unsafe situations. • Interviewed safety representatives at a selection of MWD worksites to assess their perceptions of their authority and responsibility.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
	c. Identify what safety and other personal protective equipment MWD provides to employees and for what purposes.	• Interviewed staff in MWD's SRS section to determine the types of PPE provided to employees and how it dispenses this equipment to employees. • Reviewed MWD's policies and procedures related to requirements for and provision of PPE and evaluated these policies against Cal/OSHA's requirements for employers regarding the provision of PPE. • Interviewed staff responsible for the provision of equipment at certain worksites, as well as employees who receive and use that equipment.
	d. Assess MWD's safety protocols for employees who work on roads and streets, including equipment and procedures for lane closures.	• Interviewed staff in MWD's SRS section about MWD's safety protocols for employees who work on roads and streets. • Reviewed MWD's policies and procedures related to safety requirements for employees working on roads and streets, and evaluated these policies against Cal/OSHA's requirements for employers regarding worksites around roads or traffic.
	e. Review a selection of safety complaints since 2010 to assess how MWD officials handled reports of unsafe working conditions and other safety incidents.	• Determined MWD's protocols for collecting and addressing safety complaints and related concerns. • Reviewed MWD's central database on injuries and near misses, as well as documentation maintained at individual worksites. • Reviewed a selection of safety incidents to determine whether MWD's response aligned with Cal/OSHA's requirements for employers as well as MWD's safety policies for reporting and responding to incidents.
	f. Determine whether MWD has adequate policies and procedures to protect employees, including safety representatives, who make safety-related complaints from retaliation.	• Reviewed MWD's retaliation policy as identified under Objective 6(c). • Interviewed staff in MWD's SRS section, including those working at pumping plants and water treatment plants, to obtain their perspective about MWD's prevention and handling of possible retaliation.
10	Assess MWD's HAZWOPER program and evaluate its effectiveness in addressing hazardous waste issues, including processes for employees to address HAZWOPER issues on the job.	• Reviewed requirements in state law and interviewed MWD staff to determine what HAZWOPER requirements MWD is required to follow. • Evaluated MWD's HAZWOPER program, including its policies and processes, and compared it to Cal/OSHA's HAZWOPER requirements.
11	Identify MWD's obligations as a landlord to employees for whom it provides company housing. In particular, assess MWD's processes for the following:	• Reviewed state law to determine MWD's obligations to employees for whom it provides housing.
	a. Handling landlord-tenant relations, rental agreements, and landlord-tenant disputes, including in the case of tenants who separate from employment.	• Interviewed staff in MWD's Real Property section to determine how MWD handles landlord-tenant relations and disputes. • Reviewed rental agreements that MWD has entered into with employees when providing housing, including clauses for terminating occupancy. • Identified no issues beyond those discussed in the report.
	b. Addressing habitability issues such as lead, asbestos, water and faucet quality, provision of adequate utilities, and related issues.	• Interviewed staff in MWD's Real Property section to determine how MWD responds to habitability issues raised by employee residents. • Interviewed staff in MWD's Real Property section to determine how it measures and manages environmental hazards in employee housing, such as lead and asbestos. • Interviewed employee housing residents regarding their experiences with employee housing, including any habitability issues they have experienced. • Reviewed housing assessments and environmental hazard reports to determine the types and magnitude of habitability issues affecting MWD's employee housing.

	AUDIT OBJECTIVE	METHOD
	c. Addressing other concerns related to living conditions, including replacement housing, repairs, and the provision of rental insurance.	• Interviewed staff in MWD's Real Property section to determine how MWD responds to employee repair requests. • Reviewed MWD's maintenance log, which records housing issues raised by employee residents and addressed by Real Property staff. • Interviewed employee housing residents regarding their experiences with employee housing, including how quickly MWD responds to repair requests or other concerns. • Reviewed MWD's housing occupancy policy and rental agreements that MWD has entered into with employees when providing housing and determined that these documents state that MWD is not responsible for loss of employees' personal property.
	d. Providing emergency medical services in remote locations, including 9-1-1 service, life flight/medical transport, fire, police, and security. Determine how these matters are addressed when such services may be unavailable.	• Interviewed staff in MWD's Real Property section, who stated that they were unaware of any agreements with emergency responders guaranteeing a minimum level of services, and also that each site had its own security personnel. • Interviewed employees residing in MWD housing. • Identified no issues beyond those described in the report.
	e. Providing services for the children of employees, including educational arrangements, busing, and community safeguards to prevent accidents, injuries, and potential hazards.	• Interviewed staff in MWD's Real Property section, who stated they were unaware of any such services for the children of MWD employees. • Interviewed employees residing in MWD housing. • Identified no issues beyond those described in the report.
	f. Otherwise managing its employee housing program.	In addition to the work described above: • Reviewed MWD's operating policy on employee housing. • Interviewed employee housing residents regarding their experiences with employee housing. • Visited and inspected a selection of employee housing units at three of MWD's pumping plants.
12	Review and assess any other issues that are significant to the audit.	We did not identify any other issues that are significant to the audit.

Source: Audit workpapers.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information we use to support our findings, conclusions, and recommendations. In performing this audit, we relied on electronic data files from MWD related to its EEO complaints, hiring demographics, and safety incidents. To evaluate the data, we interviewed staff knowledgeable about the data and performed testing of the data. In all instances, except the EEO data, we found the data to be sufficiently reliable for our audit purposes. We determined that the EEO complaint data was incomplete and inaccurate. However, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

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THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Manager

April 4, 2022

Mr. Michael Tilden*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Mr. Tilden:

Thank you for the opportunity to review and respond to your audit of The Metropolitan Water District of Southern California's handling of Equal Employment Opportunity (EEO) complaints from 2004 to 2021, our hiring practices, the independence and authority of the Ethics office, our safety program, and our maintenance of workforce housing at our desert facilities.

Metropolitan accepts the audit's recommendations and will swiftly implement them to address deficiencies identified. I welcome this audit's recommendations as important additions to the workplace improvements that I have already begun to institute since joining Metropolitan as its General Manager nine months ago. Some of that progress as well as other specific comments on the audit are outlined in the attachment to this letter.

We have zero tolerance for harassment, misconduct, or bias, and we are committed to establishing best-in-class EEO policies and systems to safeguard our workforce.

In addition to adopting the audit's recommendations, Metropolitan is implementing new policies and procedures recommended by a Workplace Climate Assessment that we commissioned from an outside law firm last year and that will strengthen our agency and better serve all our employees.

Metropolitan recently announced the hiring of a new EEO Officer, who will start on April 18. The EEO Officer is a direct report to me and will have the independence and reporting structure recommended in this audit.

* California State Auditor's comments begin on page 93.

We are also finalizing the hiring of a talented leader to oversee our newly created Diversity, Equity, and Inclusion Office, which will establish programs to support our workforce and help our agency continue to adapt to societal changes and expectations.

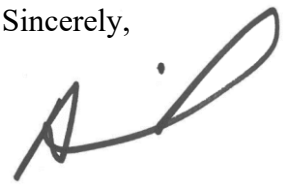
Both of these new offices will be fully resourced and staffed, as is reflected in the proposed biennial budget I have presented to Metropolitan's Board of Directors, and I am committed to providing sufficient resources for these offices going forward and commensurate to the need.

Metropolitan has established a Joint Labor Management Advisory Committee and will continue to work with our labor partners to pursue new policies, programs, and personnel to help build and reaffirm a workplace culture of inclusion, respect, and safety for all our employees and to improve accountability at all levels of the agency. This expectation – a workplace culture of equity, fairness and inclusion – was the focus of a management forum dialogue held last month among 280 of Metropolitan's executive leadership, managers and supervisors.

① We have begun a collaboration with the National Safety Council to identify further improvements to our safety programs and practices. We have held two "Resident Town Hall" listening sessions to hear from tenants of our desert housing, and we have established a communications portal to improve information sharing with our tenants. Metropolitan will invest the resources necessary to improve living conditions for our valued workforce in our desert facilities.

I appreciate the work of you and your team to help improve our agency to benefit our employees.

Sincerely,



Adel Hagekhalil
General Manager

Attachment

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
1	**Ethics** 1. The Ethics Office lacks the necessary independence to perform its duties as required by SB60 2. Ethics Office suffers from insufficient policies and procedures 3. Leadership demonstrated an unwillingness to ensure the office has the necessary resources and authority to investigate ethics complaints	Legislative updates: • Amend state law to include one or more mechanisms by which it can revoke or limit MWD's authority over key personnel and ethics processes • Establish MWD's ethics officer as the sole authority for interpreting MWD's ethics rules when conducting investigations into alleged ethics violations • Grant MWD's ethics officer the authority to contract with outside legal counsel for the purposes of receiving independent legal advice • Require any employee within MWD, including board members, to provide ethics officer any documents requested as part of an ongoing investigation without waiving any privileges that may apply • Prohibit any employee within MWD, including board members, from interfering in any way in an investigation		**MWD accepts and will implement the audit recommendations. We welcome the opportunity to work with the state legislature to address the audit findings and ensure the Ethics Office has the authority and independence to effectively carry out its duties.**
		MWD Administrative code updates: • Prohibit interested parties from participating in the office's investigation process, except when necessary • Establish the best practices highlighted in this report for protecting the independence of the ethics office	October 2022	**MWD accepts and will implement the audit recommendations.**

②

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
2	**Legal/Ethics** Interference by high ranking officials: Weaknesses in the Code allowed the GC and the Chair of the Board to interfere with the work of the Ethics Office ③ • Re investigation of improper disclosure of a confidential document; Ethics inquiry from the Chair and GC review sought to change the Ethics Officer's conclusion • Investigation of a staff member making misleading statements to the board Inappropriate interference by GC	Refer to Item 1 above.		**Metropolitan accepts and will implement the audit recommendations to ensure the independence of the Ethics Office and ensure avoidance of conflicts of interest in the investigation of complaints.** The General Counsel and the past Chair provided the following information to the Audit team, which was not reflected in the report: • The inquiry by the Chair was in response to the improper disclosure of an attorney/client privileged document to counsel opposing Metropolitan in litigation. The General Counsel reviewed the preliminary investigation report and provided comments to the Ethics Officer as requested by the Chair of the Board. The Ethics Officer was not bound by and did not accept the comments of the General Counsel; she did not change the conclusion of her preliminary investigation. The Chair and the General Counsel did not improperly interfere with the independence of the Ethics Officer. • The General Counsel reviewed drafts of the Ethics Officer's investigation report in accordance with the Ethics Office Rules of Investigation. The rules at that time included a review function by the General Counsel; anticipated that the Ethics Officer and General Counsel may not always agree; and made clear that the Ethics Officer retained the autonomy to accept or reject any comments or recommendations of the General Counsel. The General Counsel acted in accordance with the rules created by the Ethics Officer; comments by the General Counsel in accordance with adopted procedures did not constitute interference with the Ethics Officer.

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response	
	• Board Chair initiated a review by an external law firm. Unilaterally directed the GM to hire a firm. Did not bring it to the full board. The outside attorney's objections to the review were by definition, biased. Staff was not consulted about the nature and the timing of the review. Ethics Officer resigned because she could not reconcile her obligations			• The Ethics Office is part of Metropolitan and subject to Board Oversight. The scope of work of the outside law firm did not relate to the Ethics Officer's conclusion in the investigation of an MWD staff member or any specific Ethics Office investigation. The scope of work included a review of policies and procedures of the Ethics Office, including investigation procedures for procedural soundness. The action of the Chair and the Ad Hoc Committee to recommend hiring of outside counsel did not interfere with an investigation of an MWD staff member by the Ethics Officer.	④
3	**Hiring/Recruitment/ Promotion** 1. Operates a hiring process that gives discretion to the hiring manager, without safeguards against favoritism or bias 2. Hiring process does not protect applicants from potential discrimination 3. EEO does not have a role in the current hiring process; no EEO hiring documentation in hiring files.	• Develop formal procedures for analyzing employee demographics and taking appropriate action based on those data. o MWD should report to its board on the results of the demographic analysis and actions	April 2023	**MWD accepts and will implement the audit recommendations** • Metropolitan will jointly formalize procedures for analyzing employee demographics, ensure appropriate legal requirements are met, and that additional analysis shall be used appropriately. This information will be reported to the Board on a regular basis.	
		Formally train hiring managers and human resources staff on their roles and responsibilities	April 2023	• A formal recruitment "desk manual" has been drafted for recruiters. It will be reviewed and revised based on revisions to the recruitment procedures and used to train HR staff. A separate instruction/procedure document will be created for managers for ongoing formalized training.	①

Attachment 1
Audit Summary and Metropolitan Response

	Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
①		4. Conduct more analysis around underrepresentation; obtain and analyze promotion/job bid data; share findings of analysis with relevant staff and management groups	Adopt and publish comprehensive formal hiring procedures that include • Process for screening applications based on defined criteria • Clear instructions for justifying hiring decisions • Document retention requirements for human resources staff and hiring managers	October 2022	• A recruitment procedures document has been drafted to be discussed with the bargaining units. o It will be reviewed and revised, if necessary, to include specific processes for screening applicants, justifying hiring decisions, and clarifying document retention requirements based on the State Audit recommendations o Improved documentation in the recruitment file is planned, specifically for screening criteria and hiring decisions
			Reinstate EEO Office's role in the hiring process and develop formal procedures describing that role	October 2022	• Metropolitan, will establish the appropriate role for EEO in the hiring process. Once established it will be documented in formal procedures and training will be provided
⑤	4	**<u>EEO</u>** 1. MWD's EEO policy and procedures do not align with best practices 2. EEO and sexual harassment policies are out of date 3. MWD does not provide EEO investigation procedures to employees 4. Due to delays in investigations, employees may continue to work in dysfunctional or potentially unsafe situations	Ensure compliance with state and federal laws and best practices, by updating policy to: • Include a robust definition and example of retaliation • Include information about an employee's right to file a complaint directly with DFEH or the EEOC • Make explicit reference to written investigatory procedures where employees can obtain a copy of procedures • Ensure that the policy accurately reflects all other requirements in state and federal law. MWD should establish a process for regularly reviewing the policy to see if changes are needed.	October 2022	**MWD accepts and will implement the audit recommendations** • The newly hired EEO Officer will be developing a strategic and organizational plan to eliminate the backlog of cases and ensure policies and procedures are up to date. In the meantime, MWD has hired an outside law firm experienced in EEO matters, Meyers Nave Company, to re-write policies and procedures, including a retaliation and abusive conduct policy. Policies and procedures will strengthen the specific references to employee's rights to file directly with the DFEH and EEOC. These policies/procedures will receive input from the Joint Labor Management Advisory Committee and also be presented to the DE&I Council. The role of the EEO Officer will be to regularly review all policies and procedures to determine if changes are needed.

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
		To avoid future instances in which EEO complaints go unaddressed: • Develop written procedures that specify how non-EEO staff who receive complaints from employees should handle referrals of EEO complaints to the EEO office, and train staff on those procedures	June 2022	• As mentioned above, MWD has hired an outside law firm experienced in EEO, Meyers Nave Company, to re-write policies and procedures which will include how referrals to the EEO office from non-EEO staff should be handled. Once these policies and procedures are established all HR staff, Ethics staff and management will be trained. (5)
		To ensure that the EEO office has appropriate jurisdiction over EEO complaints: • Develop written procedures for handling potential threats to impartiality in investigations, which contain explicit conditions in which a party other than the EEO office plays a lead role in an EEO complaint, such as the Ethics Officer or the General Counsel's office	June 2022	• MWD has hired an outside expert, Meyers Nave Company, to revise existing policies and procedures. These revisions will formally define the practice of ensuring that conflicts of interest and impartiality in the EEO investigation process are clear, specifically when a party other than the EEO office plays a lead role in an EEO complaint.
		Annually share the results of its NDP analyses with various management groups as well as recruitment	June 2022	• With the plan to increase the staff in the EEO office, and specific roles defined, staff will be dedicated to conduct the analysis required for compliance with the AAP and NDP and to share the results with management and recruitment staff will become a regular annual process.
		To ensure it has effective and up-to-date policies on related personnel matters: • Review and update its sexual harassment policy as needed • Develop an official policy defining and prohibiting abusive conduct	October 2022	• MWD has hired an outside expert, Myers Nave Company, to revise existing policies and procedures. This includes the sexual harassment policy and an official policy on prohibiting abusive conduct.

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
		To better position itself to handle all EEO responsibilities required by state and federal law and best practices, implement the following improvements to its EEO office: • Create and fill additional positions that are commensurate with the workload of the EEO office, including additional staff to handle investigations, training, and compliance • Assign formal written responsibilities for specific staff within the office • Structure the EEO office in such a manner that it can operate independently with minimal potential threats to impartiality	October 2022	• The newly hired EEO Officer, scheduled to start in April, will be developing a strategic and organizational plan. In addition, the proposed budget includes increasing the staff of the EEO office from 2 full-time positions to 6 full-time positions which will be filled to address the needs of the function, with the understanding that additional resources can be identified as needed to meet the stated goal of the Board. As part of the strategic and organizational plan, responsibilities will be assigned formally within the office through performance expectations and established job descriptions.
⑤		To ensure timely response to EEO complaint, update investigation procedures to include: • Time frames that match DFEH best practices for responding to, investigating, and closing EEO complaints and should adhere to those time frames • Report to its board quarterly on how many EEO complaints have been received, investigated, including how many of those investigations surpassed the time frames in MWD's procedures	October 2022	• MWD has hired an outside expert, Meyers Nave Company, to revise existing policies and procedures. These will include references to time frames similar to the DFEH and EEOC. In addition, the EEO Officer will report to the Board quarterly as recommended by the State Audit.
		To ensure that all EEO complaints and their outcomes are recorded accurately and promptly: • Implement an electronic recordkeeping system that will allow for accurate and complete tracking of EEO complaints in a single location. • Designate an individual to be responsible for logging, tracking, and updating EEO complaint records	October 2022	• MWD has recently selected an electronic recordkeeping system to track cases and to receive anonymous calls. The new system will provide a more comprehensive way for MWD EEO office and Human Resources to track, document and manage its cases with greater efficiency and timeliness. • As stated, our proposed budget includes additional positions for the EEO office to support MWD EEO efforts.

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
		To ensure equity and consistency in its disciplinary process: • Implement a written, formal process that outlines the steps that it must follow and the factors it must consider when deciding whether and how to issue discipline • Develop a recordkeeping policy that documents the disciplinary process so that it can demonstrate that its process is thorough and consistent	October 2022	• Steps are in progress to document a formal checklist, or step process, for factors that must be considered, reviewed and documented in any disciplinary action including those resulting from an EEO investigation. • The new system described will be implemented for Employee Relations cases including discipline, grievances and appeal hearings.
		To prevent and address mistreatment of complaints and potential violations of its retaliation policy: • Develop written procedures for identifying and intervening in potential retaliation while EEO investigations are ongoing • Dedicate a person to follow up with complainants after EEO investigations to ensure that incidents involving potential retaliation are not occurring, as well as track these follow-up discussions	October 2022	• MWD has hired an outside expert, Meyers Nave Company, to revise existing policies and procedures. These will include further definition of retaliation. • As part of the new EEO Officer strategic plan, roles and responsibilities will be defined for all EEO Office staff and will include a role, or person, to follow-up with complainants to ensure retaliation is not occurring.

①

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	• Metropolitan Response
		To ensure the board is informed of how often EEO matters are being settled and by what means: • Amend the administrative code to require that all settlements that invoke confidentiality or have a financial impact, be reported quarterly to the Legal and Claims Committee • Develop a written policy that outlines mandatory information required for reporting settlements. To include whether EEO issues were implicated, is the employee still employed by MWD, existence and type of financial or confidentiality terms, and has MWD take any corrective action in response to the alleged issues • Implement centralized recordkeeping procedures for all employee settlement agreements, including a means of confidentially indicating the existence of such settlement in the EEO complaint database, its personnel database, or some other central repository	October 2022	• Metropolitan will amend its Administrative Code to require that all settlements that invoke confidentiality or have a financial impact, be reported quarterly to the Legal and Claims Committee. • Metropolitan will develop a written policy that outlines mandatory information required for reporting settlements, which will include whether EEO issues were implicated, whether the employee is still employed by Metropolitan, the existence, and type of financial or confidentiality terms, and whether the action was taken to address the alleged issues including any corrective action taken. • Metropolitan will implement centralized recordkeeping procedures for all employee settlement agreements, including a means of confidentially indicating the existence of such settlement in the EEO complaint database, the personnel database, or some other central repository.
5 ⑥	**Safety** 1. Policies do not require a minimum level of collaboration between management and safety staff 2. Policies do not define retaliation or create a process for responding to retaliation concerns from employees	• Establish minimum collaboration between safety and managers • Ensure handling of safety complaints • Define retaliation and document protection from retaliation	June 2022	**MWD accepts and will implement the audit recommendations.** • A written requirement will be added to the Health and Safety Employee (HSE) Manual establishing a minimum level of regular meetings between safety representatives and management • The HSE Manual will be updated to reference the MWD-wide policy against retaliation contained in Division VII of the Metropolitan Administrative Code. • We have begun a collaboration with the National Safety Council to identify further improvements to our safety programs and practices.

Attachment 1
Audit Summary and Metropolitan Response

Item	Audit Findings	State Auditor Recommendations	Due Date	Metropolitan Response
6	**Housing** MWD has not prioritized responding to housing issues 1. Maintenance database does not reliably track how long it takes to resolve housing issues 2. Employees cannot afford additional delays in the housing replacement process	To better protect employees required to reside in employee housing from issues threatening the safety and habitability of this housing: • Improve detail and consistency of procedures for responding to maintenance requests • Establish procedures for tracking and regularly report to the board • Establish contingency plan for addressing its long-term issues	October 2022	**MWD accepts and will implement the audit recommendations.** • Metropolitan has held two listening sessions in the last six months with tenants of our desert housing and has established a "Resident Portal" to improve communication and provide repair status for resident requests and other pertinent information as it relates to the Safe, Decent and Sanitary standard condition of the homes. ① • Real Property has also established a protocol for prioritizing maintenance and repairs (resident reported and proactively scheduled to avoid failure), hired a planner/scheduler to ensure accuracy of repair/maintenance data, and trained the Maintenance Manager and technicians on the appropriate use of the asset maintenance system. A regular report to the board on housing maintenance activity will be provided. ⑦ • Our proposed budget includes additional staff positions for the Real Property Group to support MWD's efforts to ensure the timely response to service requests of the employees required to reside in employee housing. • A contingency plan will be prepared to address long-term employee housing replacement and put into effect in the event the planned replacement of employee housing currently underway does not move forward.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

To provide clarity and perspective, we are commenting on the response to the audit from MWD. The numbers below correspond to the numbers we have placed in the margin of the response.

Throughout its response MWD claims to have taken actions that are responsive to our audit findings and recommendations. MWD did not inform us about these actions during our audit. As such, we have not reviewed evidence demonstrating the progress MWD claims to have made in these areas. We look forward to reviewing the documentation MWD provides related to these actions during our regular follow-up on the status of our recommendations. (1)

In the attachment to its response, MWD summarizes some of our findings and recommendations. These summaries are not always complete and sometimes omit information critical to properly understanding our findings and recommendations. Therefore, please refer to our findings throughout the body of the report and our recommendations starting on page 5. (2)

We disagree with MWD's assertion that the general counsel and former chair provided us information that was not reflected in the audit report. The report reflects our careful consideration of all relevant information we collected, including any provided by the general counsel and former chair. For example, we discuss our review of the ethics office's procedures, and the flaws in those procedures, throughout the relevant sections of our report. However, as we state on pages 55 and 56, because MWD has declined to waive the privileged status of much of the documentation supporting our conclusions, we cannot discuss some aspects of the interference we observed in detail. Further, MWD's response does not dispute the accuracy of any fact included in the report. Instead, MWD appears to take issue with the conclusions we reached. However, we stand by our conclusion that the former chair and general counsel inappropriately interfered in the two ethics investigations we discuss. (3)

MWD mischaracterizes our concerns about the 2017 review of MWD's ethics office by an outside law firm. Our concerns are not based on the scope of the review. Instead, as we conclude on page 58, the decision by MWD's management to initiate the review was not sufficiently transparent or accountable. Nonetheless, MWD's statement that the outside law firm's scope of work was unrelated to specific ethics office investigations is inaccurate. The scope of work for the review clearly states that the firm will (4)

review recent investigations for procedural soundness. Further, as we note on page 58, the former chair announced at a public board meeting that his decision to initiate a review of the ethics office was because of concerns with recent ethics office investigations. We also reviewed further evidence regarding MWD's motivations for initiating the external review. However, because that documentation is privileged, we are unable to discuss it here. MWD's mischaracterization of its 2017 review of the ethics office—as well as its persistent unwillingness to ensure that the ethics office has the necessary resources and authority to operate independently—further highlight the need for legislative intervention.

(5) MWD's response that it has hired an outside law firm to revise existing policies and procedures to address key EEO-related findings and recommendations raises concerns that MWD is still not taking sufficient responsibility for its EEO process. As we state on page 20, MWD has not adequately planned or devoted resources to its EEO program. As a result, we recommend on page 6 that MWD staff its EEO office to handle all EEO responsibilities and assign formal responsibilities for that staff. Given that MWD references the hiring of an EEO officer and states it intends to increase staff in its EEO office, it is unclear to us why MWD is relying on an external party to perform this important work instead of developing the expertise and independence to do so in accordance with our recommendation.

(6) MWD indicates that the implementation date for this recommendation is June 2022. Before receiving MWD's response, we informed MWD that we would change the implementation due date for the recommendation related to handling of safety complaints and the protection of workers who make them to October 2022, as shown on page 9. We made this change because MWD indicated that doing so would allow it to implement this recommendation in conjunction with the retaliation-related recommendations that resulted from our EEO review.

(7) We were aware of the steps MWD described in its response and concluded they are insufficient. For example, as we explain on page 61, MWD's process documents for responding to maintenance requests lack the detail necessary to determine what types of maintenance requests will trigger a timely response. Moreover, MWD refers to hiring a planner, which is an action it took in July 2020 according to the information it provided to us. Nonetheless, as we explain on page 62, our review of MWD's maintenance data determined that we cannot rely on the data. Our determination was based on deficiencies in the data that persisted through the time of our review. Therefore, we stand by our conclusions that MWD should take additional steps in order to ensure the habitability of the housing it provides its employees.

Division II

PROCEDURES PERTAINING TO BOARD, COMMITTEES AND DIRECTORS

Chapter		Sec.
1	Board of Directors	2100
2	Board Officers	2200
3	Rules Governing Committees	2300
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Chapter 1

BOARD OF DIRECTORS

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Article 1

MEETINGS

Sec.
2100. Regular Meetings
2101. Special Meetings
2102. Emergency Meetings
2103. Place of Meetings
[2104 - repealed]
2105. Closed Meeting Procedure
2106. Adjourned Meetings
2107. Legal Department Representation
2108. Minutes
2109. Board Agenda

§ 2100. Regular Meetings.

adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; renumbered to Section 2103 and amended by M.I. 37492 - January 10, 1989 (previous Section 2103 repealed).

[§ 2104 - repealed by M.I. 37722 - June 13, 1989]

§ 2105. Closed Meeting Procedure.

(a) The Chair shall be responsible for ensuring that procedural requirements, other than requirements for notice, are fulfilled when a closed meeting is held. The Board Executive Secretary shall be responsible for fulfilling any notice requirements relating to closed meetings. The General Counsel shall be responsible for the preparation of any documents required by Government Code Section 54956.9 with regard to litigation. The General Counsel, General Manager and when appropriate the Auditor and Ethics Officer shall designate staff members and others who shall remain in the closed session to assist the Board in its deliberations. The General Counsel shall also designate staff members to record the minutes of the closed meeting.

(b) No person attending a closed session may disclose any matter discussed in the session where to do so would be contrary to the purpose for which the session was held. Any director who has not attended a closed session and wishes to be advised of the content of the session may inquire of any director who attended the closed session. The person contacted may advise the inquiring director of the content of the session. The advised director shall not disclose the matter for which the session was held.

(c) If a director, a Department Head, or a person other than a District staff member is reported to have violated Section 2105(b), the matter shall be referred to the Executive Committee for investigation and consideration of any appropriate action warranted including, but not limited to, legal action, censure, removal from one or more committee assignments, and recommendation to the member's appointing agency that steps be taken to remove that individual from the Board. Before taking any action and as part of the consideration, the Executive Committee shall provide the person under investigation with an opportunity to meet with it or a subcommittee appointed by it, and present reasons and evidence why action should not be taken.

(d) If a member of the staff is reported to have violated Section 2105(b), the matter shall be referred to the appropriate Department Head for investigation; the Department Head shall report to the Executive Committee any action taken including, but not limited to, legal action and initiation of discipline.

Ords. 85 and 113; repealed by Ord. 146; Sections 201.2.5.3 through 201.2.5.5 added, as amended, by M.I. 32690 - April 10, 1979; amended by M.I. 33493 - November 18, 1980; renumbered Sections 201.2.6.6.4 through 201.2.6.5 by M.I. 34112 - February 9, 1982; renumbered Sections 201.3.9 through 201.3.9.2 and amended by M.I. 35469 - January 8, 1985 Sections 201.3.9 through 201.3.9.2 repealed and Sections 2108(a) through 2108(b) adopted by M.I. 36464 - January 13, 1987; renumbered to Section 2105, paragraphs (a) and (b) deleted and new language adopted by M.I. 37492 - January 10, 1989 (previous Sections 2106 through 2107 repealed). Sections 201.2.5.6.1 through 201.2.5.6.3 - M.I. 33600 - February 10, 1981; renumbered Sections 201.2.6.6.1 through 201.2.6.6.3 and amended by M.I. 34112 - February 9, 1982; amended by M.I. 35061 - March 13, 1984; renumbered Sections 201.3.9.3 through 201.3.9.5 - January 8, 1985. Sections 201.3.9.3 through 201.3.9.5 repealed and Sections 2108(c) through 2108(e) adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; renumbered to Section 2105(b) through (d) by M.I. 37492 - January 10, 1989; Section 2105 paragraph (a) amended by M.I. 41684 - December 14, 1995.

Article 9.5

AUDIT AND ETHICS COMMITTEE

Sec.
2495. Day of Regular Meeting
2496. Duties and Functions

§ 2495. Day of Regular Meeting

The Audit and Ethics Committee shall hold regular meetings every two months on the fourth Tuesday of the month.

M.I. 51391 - November 6, 2018

§ 2496. Duties and Functions

(a) Duties and Functions with respect to General Auditor

(1) The Audit and Ethics Committee shall study, advise and make recommendations with regard to:

(i) All reports of the General Auditor and external auditors, including the audited financial statements of the District;

(ii) The Audit Department's annual business plan and biennial budget;

(iii) Requests from other committees of the Board for audits and reviews not included in the Audit Department's annual business plan;

(2) The Audit and Ethics Committee shall be responsible for monitoring and overseeing the duties and responsibilities of the Audit Department and the external auditors as those duties and responsibilities relate to the effectiveness of the District's internal control system. It shall review and approve the business plan containing the key priorities for the coming year of the General Auditor and the Audit Department in advance of the July Board meeting.

(3) As part of the Department Head annual evaluation process, the Audit and Ethics Committee shall be responsible for engaging in periodic performance expectations discussions, including progress checks, with the General Auditor.

(b) Duties and Functions with respect to Ethics Officer

(1) As part of the Department Head annual evaluation process, ~~T~~he Audit and Ethics Committee shall be responsible for ~~recommending to the Board of Directors employment and termination of the Ethics Officer. The Committee~~

~~shall further conduct~~engaging in periodic performance expectations discussions, including progress checks, with~~reviews of~~ the Ethics Officer~~ and provide a written report to the Board of Directors regarding that review~~.

(2) The Audit and Ethics Committee shall be responsible for monitoring and overseeing the duties and responsibilities of the Ethics Officer to ensure the independence of the Ethics Officer. ~~and to ensure the Ethics Officer is working in a collaborative manner with the Board of Directors, General Manager, General Counsel and General Auditor. Such review and monitoring shall include resolution of any issues between the Ethics Officer and the General Manager, General Counsel and General Auditor regarding requests for access to documents and information maintained by those Department Heads.~~

(3) The Audit and Ethics Committee shall review and receive ~~quarterly~~ bi-monthly status reports of pending investigations by the Ethics Officer. The reports shall include the general nature and status of the investigation, how long the investigation has been pending, when the investigation is expected to be completed and, when completed, the resolution of the investigation.

(4) The Audit and Ethics Committee shall review and receive quarterly reports from the Ethics Officer on any engagement of professional and technical consultants.

(5) The Audit and Ethics Committee shall review and approve the business plan containing the key priorities for the coming year for the Ethics Office. It shall review and approve the business plan in advance of the July Board meeting.

M.I. 51391 - November 6, 2018; amended paragraph (b)(3) by M.I. 52574 - November 9, 2021.

Article 2

GENERAL MANAGER

Sec.
6410. Powers and Duties
6411. Principal Assistants
6412. Delegation of Executive and Administrative Powers
6413. Insurance Program
6414. Use of District Automobile
[6415. - Repealed]
6416. Annual Report to Executive Committee

§ 6410. Powers and Duties.

The General Manager shall be the chief executive of the District and shall exercise all executive, administrative, and ministerial powers not specifically reserved to the Board, General Counsel, ~~or~~ General Auditor, or Ethics Officer by law, this Code or by order of the Board, or by law to any other officer.

Ords. 29, 101, 113, 121 and 127; repealed by Ord. 146; Section 412.1 added, as amended, by M.I. 32690 - April 10, 1979. Section 412.1 repealed and Section 6410 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; amended by M.I. 43968 - April 11, 2000.

§ 6411. Principal Assistants.

The powers and duties of the principal assistants to the General Manager are as follows:

(a) The Assistant General Manager(s), Chief Operating Officer, Chief Administrative Officer, and Chief Financial Officer shall perform such duties and render such services as may be assigned to them by the General Manager with like effect as though such duties or services were performed or rendered in person by the General Manager. The General Manager shall designate in writing by office and name principal assistants to act in the General Manager's place in the event the General Manager is absent, unable to act in person, or until the appointment and qualification of the General Manager's successor, and shall specify the order in which such principal assistants shall assume the powers and duties of the General Manager in any such event. The designation may be changed by the General Manager at any time and for any reason, but a designation shall be kept on file at all times. The original of the designation shall be filed in the office of the Board Executive Secretary, and a signed copy shall be delivered to the principal assistants named therein.

(b) The Assistant General Manager(s), Chief Operating Officer, Chief Administrative Officer, and Chief Financial Officer shall act in the name of the General Manager, except when empowered by law or in writing by the Board or the General Manager to act in their own names, and their acts shall be equally effective whether done in their own names or in the name of their principal.

Ords. 29, 101, 113, 121 and 127; repealed by Ord. 146; Section 412.2 added, as amended, by M.I. 32690 - April 10, 1979; amended by M.I. 35433 - December 11, 1984. Section 412.2 repealed and Section 6411 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; paragraphs (a) and (b) amended by M.I. 40872 - June 14, 1994; paragraphs (a) and (b) amended

Article 5

ETHICS OFFICER

Sec.
6470. Powers and Duties
6471. Authority to Obtain Professional Services
6472. Reports to Audit and Ethics Committee

§6470. Powers and Duties.

The powers and duties of the Ethics Officer shall be as follows:

(a) The Ethics Officer shall report to the Board, through the Audit and Ethics Committee.

(b) The Ethics Officer shall oversee an Ethics Office staffed with professional, qualified persons.

(c) The Ethics Officer shall be free from political interference in fulfilling his/her responsibilities detailed in this article and in Division VII.

(d) The Ethics Officer shall have sole authority to interpret Metropolitan's ethics rules. ~~The Ethics Officer shall maintain a collaborative relationship with the Board, General Manager, General Counsel, and General Auditor.~~

(e) The Ethics Officer shall propose amendments to the Administrative Code to the Audit and Ethics Committee for approval and adoption by the Board, relating to:

(1) Regulation of lobbying activities;
(2) Conflicts of interest and financial disclosure;
(3) Public notice and approval procedures for contracts of $50,000 or more;
(4) Disclosure of campaign contributions related to potential conflicts of interest;
(5) Such other ethics rules for application to board members, officers, employees, lobbyists, lobbying firms, and contractors as deemed appropriate.

(f) The Ethics Officer shall educate, train, provide advice and seek compliance from board members, officers, applicable employees, lobbyist, lobbying firms, and Metropolitan contractors and subcontractors concerning:

(1) The rules prescribed in Division VII;
(2) The Political Reform Act of 1974, as amended and applicable regulations;
(3) The conflict of interest rules of Government Code section 1090.

(g) The Ethics Officer shall investigate potential violations of ethics rules in Division VII by board members, officers, applicable staff, lobbyists, lobbying firms, and contractors consistent with the rules specified in Division VII. The Ethics Officer shall prepare status reports of pending investigations on a ~~quarterly~~ bi-monthly basis. The reports shall include the general

nature and status of the investigation, how long the investigation has been pending, when the investigation is expected to be completed and, when completed, the resolution of the investigation.

(h) The Ethics Officer shall be the filing officer on behalf of the District to receive and file Statements of Economic Interest pursuant to the California Government Code and Section 7501 of this Administrative Code.

(i) The Ethics Officer shall have the authority to confer with the Chair of the Board and the Chair and Vice Chair of the Audit and Ethics Committee for the purpose of seeking advice and feedback on any policy and~~,~~ operational matters, or feedback on investigative matters, subject to the confidentiality requirements in section 7412 of the Administrative Code.

(j) The Ethics Officer shall have the authority to obtain, and have unrestricted access to, all functions, documents, records, property, personnel and other information requested as part of an Ethics Office complaint or investigation without waiving any privileges that may apply.

M. I. 45285 - April 8, 2003; paragraph (e) deleted by M. I. 46338 - August 16, 2005; paragraph (e) added by M.I. 49648 - January 14, 2014; amended paragraphs (a), (b), (c) and (d), added paragraphs (e), (f) and (g), and renumbered former paragraph (e) to paragraph (h) and amended same by M.I. 51391 - November 6, 2018; amended paragraphs (e), (f), (g), and (h), and added new paragraph (i) by M.I. 52574 - November 9, 2021.

§6471. Authority to Obtain Professional Services.

(a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period shall not exceed $100,000.

(b) The Ethics Officer is authorized to employ the services of other professional or technical consultants for advice and assistance in performing the duties assigned as may be required or as deemed necessary, provided that the amount to be expended in fees, costs and expenses under any one contract in any one year shall not exceed $50,000.

(c) The Ethics Officer shall inform the Audit and Ethics Committee whenever the authority granted under this section is exercised, and shall further report quarterly on activities concerning any agreements entered into under this section. Any such contracts shall be consistent with Metropolitan contract requirements and shall be reviewed by the General Counsel.

M. I. 45285 - April 8, 2003; amended by M. I. 46064 – January 11, 2005; amended by M.I. 46983 - February 13, 2007; amended by M. I. 47636 - September 9, 2008; renumbered from Section 6472 to 6471 and amended same by M.I. 51391 - November 6, 2018.

§6472. Reports to Audit and Ethics Committee.

(a) The Ethics Officer shall annually, in advance of the July Board meetings, submit to the Audit and Ethics Committee a business plan for the Ethics Office containing key priorities for the coming year for review and approval.

(b) The Ethics Officer shall prepare quarterly reports to the Audit and Ethics Committee on activities concerning agreements executed pursuant to the authority given to the Ethics Officer in Section 6471, and bi-monthly reports related to pending investigations as specified in Section 6470.

~~(c) The Ethics Officer shall annually confirm to the Board the organizational independence of the Ethics Office and the Ethics Officer's compliance with it collaborative relationship with the Board, General Manager, General Counsel, and General Auditor~~.

M. I. 45285 - April 8, 2003; Section title and paragraph amended by M. I. 46064 – January 11, 2005; amended by M.I. 46983 - February 13, 2007; Section title and paragraph amended by M.I. 47636 - September 9, 2008; amended by M.I. 49187 - September 11, 2012; changed section number from 6473 to 6472, added numbering (a) to first paragraph, and added new paragraphs (b) and (c) by M.I. 51391 - November 6, 2018.

[Former Section 6471 (Authority to Investigate) repealed by M.I. 51391 - November 6, 2018]

[Section 6474 (Ethics Training Required by Government Code) repealed by M.I. 51391 - November 6, 2018]

Article 2

STATE ~~CONFLICT OF INTEREST~~ETHICS LAWS INCORPORATED INTO ADMINISTRATIVE CODE

Sec.
7110. Incorporation of State Ethics Laws into the Administrative Code
7111. Conflicts of Interest Regarding Contracts
7112. Conflicts of Interest Regarding Governmental Decisions
7113. Campaign Contributions
7114. Influencing Prospective Employment
7115. Honoraria
7116. Gift Limitations
7117. Loans to Public Officials
7118. Statement of Economic Interests

§ 7110. Incorporation of State Ethics Laws into the Administrative Code.

The purpose of this Article is to incorporate specific state ethics laws into this Administrative Code. The state ethics laws incorporated herein shall include any relevant state laws defining or limiting the application of the incorporated law, state regulations, or formal opinions interpreting these laws, as well as any successor laws and regulations or opinions. As a result of such incorporation, the Ethics Officer shall have the jurisdiction to investigate alleged violations as well as a duty to educate, advise and train Metropolitan officials, and seek compliance by such officials. Metropolitan officials shall have an obligation to abide by these incorporated rules and are subject to the provisions of Article 4 of Chapter 4 of this Division for any violations.

M.I. 52574 - November 9, 2021.

§ 7111. Conflicts of Interest Regarding Contracts.

Government Code section 1090 is incorporated by reference into this section. Any violation of this section shall be considered a violation of this Code.

M.I. 46109 – February 8, 2005; title and paragraph amended former Section 7121 by M. I. 52574 – November 9, 2021.

§ 7112. Conflicts of Interest Regarding Governmental Decisions.

Government Code section 87100 is incorporated by reference into this section. Any violation of this section shall be considered a violation of this Code.

Section 7305 renamed and adopted by M.I. 43915 – March 14, 2000; paragraph A, A2, and paragraph D repealed by M.I. 45085 – November 19, 2002; former Sec. 7305 – Revolving Door Policy renumbered 7122, renamed, and amended by M.I. 46109 – February 8, 2005; title and paragraph amended former Section 7122 by M. I. 52574 – November 9, 2021.

§ 7113. Campaign Contributions.

Government Code section 84308 is incorporated by reference into this section. Any violation of this section shall be considered a violation of this Code.

Article 3

METROPOLITAN ETHICS REQUIREMENTS

Sec.
7120. Application of Metropolitan Ethics Requirements
7121. Misuse of Position or Authority
7122. Additional Gift Limits and Compensation Restrictions
7123. Political Contributions and Activities
7124. Limits on Contracts and Grants with Former Directors
7125. Prohibited Director Communications
7126. Use of Confidential Information
7127. Duty to Report
7128. Whistleblower and Witness Protections
7129. Failure to Cooperate with Ethics Officer Investigation
7130. Employment with Persons Doing Business with Metropolitan
7131. Compliance with Metropolitan Contracting Procedures and Guidelines
7132. Public Reporting for Contracts of $50,000 or More
7133. Restrictions on Misleading Associations

§ 7120. Application of Metropolitan Ethics Requirements.

Metropolitan officials shall have an obligation to abide by the rules listed in this Article and are subject to the provisions of Article 4 of Chapter 4 of this Division for any violations.

M.I. 52574 – November 9, 2021.

§ 7121. Misuse of Position or Authority.

Metropolitan officials shall not misuse their governmental position or authority to obtain, or attempt to obtain, a private benefit, or advantage for themselves or any other individual or entity, or a disadvantage for any other individual or entity.

M. I. 52574 – November 9, 2021.

§ 7122. Additional Gift Limits and Compensation Restrictions.

(a) ~~No~~ Metropolitan employees shall not accept any gift from a donor who the employee knows is a restricted source. This limitation shall not apply to modest food or beverages provided during a work-related event or items of nominal intrinsic value, so long as the total value does not exceed $50 in a calendar year from a single source.

(b) Metropolitan employees shall not receive, directly or indirectly, any compensation from any source, except from Metropolitan, for performance of their duties as Metropolitan employees.

M.I. 52574 – November 9, 2021.

§ 7123. Political Contributions and Activities.

Except for statements on the record at a public meeting, Directors shall not use their position of authority to communicate directly or indirectly with Metropolitan employees to influence: (1) the selection of a specific vendor, contractor, consultant, or other entity for a specific contract or procurement; (2) any hiring or employment decisions other than Department Heads; or (3) real property transaction.

The requirements of this section shall in no way restrict Directors from communicating with Metropolitan employees about Metropolitan procurement policies, procedures or other general matters, including requesting or receiving information about matters to be considered by Directors at public meetings.

M.I. 52574 – November 9, 2021.

§ 7126. Use of Confidential Information.

(a) Metropolitan officials shall not willfully or knowingly disclose or use any confidential or privileged information unless authorized to do so or required to do so by law or Metropolitan policy.

(b) "Confidential or privileged information" as used in this section shall mean information, whether contained in a document, recorded, or communicated in another manner, which is maintained confidentially at or by Metropolitan and if contained in a writing, would not be subject to disclosure under the California Public Records Act.

M.I. 52574 – November 9, 2021.

§ 7127. Duty to Report.

Each Metropolitan Management Employee shall report to the Ethics Officer any facts made known to the Management Employee which would indicate that a Metropolitan official, lobbyist, lobbying firm, or contractor has engaged in activities which appear to violate any provisions of Chapters 1 or 2 of this Division. For purposes of this section, "Management Employee" shall have the same meaning as used in section 6101(i) of this Code.

M.I. 52574 – November 9, 2021.

§ 7128. ~~Whistleblower and Witness Protection~~Retaliation, Whistleblower, and Witness Protections.

Metropolitan officials shall not ~~take~~ 1) engage in retaliation or threaten to ~~take~~ engage in ~~an~~ retaliation~~action~~ as a reprisal for~~,~~ or 2) ~~to~~ prevent, discourage, or interfere with a person from:

(a) Reporting in good faith to a Metropolitan Management Employee, the Ethics Office, or other appropriate department or government agency information (other than information about a disagreement with a policy decision within the lawful discretion of a Metropolitan official) the person reasonably believes indicates:

(1) A work-related violation of any law or Metropolitan policy, other than an equal opportunity-related law or policy,

(2) A gross waste or abuse of Metropolitan resources,~~ or~~

(3) A workplace safety concern, or

(4) A ~~gross~~ public health or safety danger.

(b) Cooperating with investigations of matters reported pursuant to subdivision (a).

Definitions and Examples

For purposes of this section, a "Covered Individual" is an official who engages in one or both of the protected activities described in subsections (a) and (b) above.

For purposes of this section, "Retaliation" is when a Covered Individual is subjected to an adverse employment action **because** they engaged in one or both of the protected activities described in subsections (a) and (b) above).

For purposes of this section, examples of an adverse employment action include, but are not limited to: demotion; suspension; reduction in pay; denial of a merit salary increase; failure to hire or consider for hire; refusing to promote or consider for promotion; harassing an employee; denying employment opportunities; changing work assignments; treating people differently, such as denying an accommodation; not talking to an employee when otherwise required by job duties; singling a Covered Individual out for harsher treatment; lowering a performance evaluation; removing a Covered Individual from projects, standby, or other work assignments; withholding pay increases or assigning more onerous work, eliminating a position, or taking a form of disciplinary action; filing bad faith complaints against someone; spreading rumors about a complaint or a complainant; or otherwise excluding the Covered Individual from job-related activities.

M.I. 52574 – November 9, 2021.

§ 7129. ~~Failure to~~ Cooperat~~ion~~ion with Ethics Officer Investigations.

(a) Metropolitan officials, lobbyists, lobbying firms, and contractors shall cooperate with the Ethics Office during an investigation. Conduct including, but not limited to, intentionally destroying relevant documents, refusing to be interviewed, refusing to provide documents or information, or obstructing an investigation shall be deemed a failure to cooperate.

(b) Metropolitan officials, lobbyists, lobbying firms, and contractors shall not provide false or misleading information to the Ethics Officer during an investigation.

(c) Metropolitan officials shall not participate in any Ethics Office complaint or investigation process except when necessary to provide information or otherwise respond to allegations.

(d) Metropolitan officials shall not interfere in any way with an Ethics Office complaint or investigation.

(e) Metropolitan officials shall provide to the Ethics Officer any documents or other information requested in connection with an Ethics Office complaint or investigation.

Chapter 4

INVESTIGATION BY THE ETHICS OFFICER

Article
1 Authority to Investigate and Jurisdiction 7400
2 Procedures for Investigations 7410
3 Procedures for Making Investigations Public 7420
4 Penalties for Violation of Metropolitan Ethics Rules 7430

Article 1

AUTHORITY TO INVESTIGATE AND JURISDICTION

Sec.
7400. Jurisdiction to Investigate
7401. Discretion to Investigate
7402. Concurrent Investigations
7403. Referrals to the Ethics Officer
7404. Determinations to Not Investigate
7405. Investigations of Directors, General Manager, General Counsel, General Auditor, or Ethics Officer
7406. Scope of Investigation
7407. Consultation with the General Counsel
7408. Requirements for Investigations

§7400. Jurisdiction to Investigate.

(a) The Ethics Officer shall investigate all formal and informal complaints if the alleged actions would, if true, constitute a violation of a Metropolitan ethics rule.

(1) The Ethics Officer shall provide written acknowledgement of the receipt of a formal complaint to the complainant, request that the complainant keep the complaint confidential, and inform the complainant that no additional updates regarding the complaint will be provided.

(2) If the Ethics Officer determines that the complaint does not involve a Metropolitan official, lobbyist, lobbying firm, or contractor, does not involve Metropolitan ethics rules, or lacks sufficient information to establish a potential violation, then the Ethics Officer shall not conduct an investigation. The complainant shall be so notified in writing of any such determination by the Ethics Officer. Nothing in this section shall preclude a complainant from filing a subsequent complaint.

(b) The Ethics Officer may initiate investigations involving potential violations of Metropolitan ethics rules without a formal or informal complaint or referral from another Metropolitan department.

investigation, make the final determination as to whether a violation has occurred. Prior to retaining the outside counsel or investigator, the General Counsel shall notify the Audit and Ethics Committee Chair.

(c) The General Counsel shall review any contract with an outside counsel or investigator to ensure compliance with Metropolitan contracting requirements.

M.I. 52574 - November 9, 2021.

§7406. Scope of Investigation.

The Ethics Officer may during the course of an investigation investigate potential violations of Metropolitan ethics rules beyond those identified in any complaint or referral received by the Ethics Officer or identified in the notification to the subject of the complaint made pursuant to section 7410.

M.I. 52574 - November 9, 2021.

§7407. Consultation with the General Counsel.

The Ethics Officer may consult the General Counsel ~~regarding any investigation~~ at the Ethics Officer's discretion.

M.I. 52574 - November 9, 2021.

§7408. Requirements for Investigations.

The Ethics Officer shall abide by the requirements set forth in this Chapter for conducting any investigation.

M.I. 52574 - November 9, 2021.

Article 2

PROCEDURES FOR INVESTIGATIONS

Sec.
7410. Notice to Subject of Investigation
7411. Investigation Timeframe
7412. Confidentiality of Investigations
7413. Access to Metropolitan Records
7414. Opportunity for Subject to Respond
7415. Preponderance of the Evidence Standard
7416. Ethics Officer Report

§7410. Notice to Subject of Investigation.

(a) Upon receipt of a complaint, referral from a Metropolitan department, or determination by the Ethics Officer to conduct an investigation pursuant section 7400(b), the Ethics Officer shall notify the subject of the complaint in writing within 30 calendar days: provided, however, if the integrity of the investigation may be compromised by notifying the subject, then the Ethics Officer may withhold notice until an appropriate time. No notice need be given to the subject of the complaint if the Ethics Officer determines that an investigation is not warranted.

(b) As a part of the notice provided in subdivision (a) of this section, the Ethics Officer shall provide the nature of the allegations, advise the subject of the investigation regarding Metropolitan's rules against retaliation, and advise the subject of their obligation to cooperate with the investigation and that the failure to cooperate may lead to disciplinary action, regardless of the outcome of the investigation.

M.I. 52574 - November 9, 2021.

§7411. Investigation Timeframe.

(a) Investigations shall be conducted expeditiously and completed within 180 calendar days, except as provided in subparagraph (b). An investigation commences upon the Ethics Officer's determination to open an investigation, but in no event later than 30 calendar days from receipt of the complaint or referral.

(b) For good cause, an investigation may extend beyond 180 calendar days; provided, however, the Ethics Officer shall provide written notice to the subject of the investigation with an expected completion date. The Ethics Officer shall also notify the Audit and Ethics Committee Chair whenever an investigation extends beyond 180 calendar days and provide periodic updates on the status of the investigation thereafter.

(c) For purposes of the 180 calendar day period specified in this section, an investigation terminates upon service of the Ethics Officer's report upon the subject of the investigation, or upon notice of no violation given to the subject of the investigation, pursuant to section 7416.

M.I. 52574 - November 9, 2021.

§7412. Confidentiality of Investigations.

(a) Investigations by the Ethics Officer shall be confidential to the fullest extent possible.

(b) The Ethics Officer has the discretion to disclose information related to investigations for significant operational or safety reasons.

(c) The Ethics Officer shall not unnecessarily disclose the identity of the subject of a complaint, except as needed in furtherance of the investigation or otherwise provided by Article 3 of this chapter.

(d) During the investigation, the Ethics Officer shall advise the subject of the investigation, the complainant, and any witnesses of the confidentiality of the investigation.

(e) The Ethics Officer may confer with the Chair of the Board and the Chair and Vice Chair of the Audit and Ethics Committee, ~~and Chair of the Board,~~ on any investigative matter subject to the following:

(1) The communications shall be ~~advisory in nature~~for the purpose of feedback.~~, and~~

(2) The communications shall be confidential~~.~~

(3) The restrictions on interference with investigations in section 7129(d).

(f) The Ethics Officer shall, to the extent possible, protect the identity of any complainant.

M.I. 52574 - November 9, 2021.

§7413. Access to ~~Metropolitan~~ Records, Information, and other Resources.

(a) ~~Subject to applicable law, t~~The Ethics Officer shall have access to all Metropolitan functions, documents, ~~files,~~ records, property, personnel ~~or~~ and other ~~materials~~ information deemed relevant by the Ethics Officer to an Ethics Office complaint or investigation, including information protected by the attorney-client privilege. Providing privileged information to the Ethics Officer shall not constitute a waiver of the privilege.

~~(b) If there is a disagreement regarding access to documents, files, records, or other materials, including those that may be protected by the attorney-client privilege or attorney work product doctrine, the Ethics Officer and General Counsel shall discuss the matter with the affected Metropolitan department, and shall make a reasonable good faith effort to resolve the dispute.~~

(b~~c~~) If ~~the disagreement is not resolved pursuant to subdivision (b) of this section, the~~the Ethics Officer determines that waiver of the attorney-client privilege is necessary, the Ethics Officer ~~and General Counsel~~ shall ~~jointly~~ present the matter to ~~an ad hoc committee consisting of the Chairs of the Audit and Ethics Committee, the Legal and Claims Committee and the Board who shall resolve any disagreement that does not involve the attorney-client privilege. If the~~

~~dispute involves the attorney-client privilege and is not satisfactorily resolved by the ad hoc committee, the matter will be considered by~~ the Board, as a majority of the Board is required to waive Metropolitan's attorney-client privilege.

M.I. 52574 - November 9, 2021.

§7414. Opportunity for Subject to Respond.

The subject of the complaint shall be afforded a reasonable opportunity to present any facts, legal arguments, or other relevant information to the Ethics Officer concerning an investigation and alleged violations prior to completion of the investigation.

M.I. 52574 - November 9, 2021.

§7415. Preponderance of the Evidence Standard.

The Ethics Officer shall use the preponderance of the evidence standard for making any determination of a violation of Metropolitan ethics rules.

M.I. 52574 - November 9, 2021.

§7416. Ethics Officer Report.

(a) Upon the completion of an investigation, the Ethics Officer shall prepare a written report that summarizes the evidence considered, any exculpatory evidence, a legal analysis if necessary, and a determination as to whether a violation has occurred.

(b) If the Ethics Officer determines by a preponderance of the evidence that the subject of the complaint has committed an ethics violation, the Ethics Officer shall provide the subject of the complaint~~, and the General Counsel,~~ the written report specified in subdivision (a) of this section, along with any relevant evidence considered by the Ethics Officer. The subject shall have 14 calendar days from receipt of the report to file any response with the Ethics Officer. The Ethics Officer may grant an extension for good cause. The Ethics Officer shall consider the response and make any final changes to the written report as deemed appropriate by the Ethics Officer within 14 calendar days of receipt of the response, if any, unless the Ethics Officer determines additional time is required. The Ethics Officer shall provide a copy of any revised written report to the subject of the complaint.

(c) If the Ethics Officer determines after an investigation that there has been no violation, the Ethics Officer shall notify the subject of the complaint within 14 calendar days of such determination.

~~(d) The Ethics Officer shall notify the General Counsel of the determination that there has been no violation at the same time the subject is notified of a no violation finding.~~

(e) Any referral to a local or state agency, an appropriate Metropolitan department or the Executive Committee pursuant to Article 4 of Chapter 4 of this Division, shall include the written report prepared by the Ethics Officer, relevant documents as determined by the Ethics Officer, and any response to the written report submitted by the subject of the complaint.

Chapter 5

~~INVESTIGATION BY THE ETHICS OFFICER~~CONFLICT OF INTEREST CODE

Article
1 Conflict of Interest Code 7500

Article 1

CONFLICT OF INTEREST CODE

Sec.
7500. Metropolitan's Conflict of Interest Code
7501. Biennial Amendments to Conflict of Interest Code
7502. Filing of Statements of Economic Interest

§7500. Metropolitan's Conflict of Interest Code.

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes and biennial amendments thereto. The FPPC has sole authority to approve Metropolitan's conflict of interest code and amendments thereto. After final approval from the FPPC, Metropolitan's conflict of interest has the force and effect of law.

M.I. 52574 - November 9, 2021 (amends former Section 7200).

§7501. Biennial Amendments Conflict of Interest Code.

The Ethics Officer has sole authority to formulate and propose biennial and other amendments to Metropolitan's conflict of interest code to the FPPC. Upon the FPPC's final review and approval of the proposed amendments to the conflict of interest code, the conflict of interest code shall be deemed promulgated and incorporated by reference into this Article of the Administrative Code. The Ethics Officer shall maintain a copy of Metropolitan's approved conflict of interest code and post it to Metropolitan's internal and external websites.

M.I. 52574 - November 9, 2021.

§7502. Filing Statements of Economic Interests.

Individuals holding designated positions in the conflict of interest code shall file their statements of economic interests with the Office of Ethics, which will make copies of the statements available for public inspection and reproduction. Metropolitan officials whom the FPPC designates as public officials who manage public investments, including members of the Board of Directors, shall file their statements of economic interests with the FPPC. The Office of Ethics shall make copies of the statements available for public inspection and reproduction.

M.I. 52574 - November 9, 2021 (amends former Section 7205).