



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

12/13/2022 Board Meeting

7-1

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**Subject**

Approve proposed amendments to the Administrative Code Section 2416 relating to Equal Employment Opportunity policies and investigative procedures involving the Board of Directors and its Direct Reports; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

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**Executive Summary**

On November 8, 2022, the Audit and Ethics (A&E) Committee adopted the proposed Administrative Code Sections 2131 and 2416, and investigative procedures involving the Board and its direct reports. This proposed action includes revisions to Administrative Code Section 2416.

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**Description**

At the November 8, 2022, meeting of the A&E Committee, the Chief Equal Employment Opportunity (EEO) Officer presented for action the updates to Administrative Code Sections 2131 and 2146, and EEO investigative procedures for complaints received against the Board and its direct reports. The A&E Committee approved the Board item; however, additional recommendations were discussed. Based on the discussion, an update to the approved Administrative Code Section 2416 was developed, as described and shown in **Attachment 1** and **Attachment 2**.

***Updates to Administrative Code Section 2416***

The proposed updates are summarized below:

1. ***Procedural updates*** (see **Attachment 1** and **Attachment 2**)
  - a. If the General Manager were the subject of a complaint, or if in the judgment of the EEO Officer the matter should be handled differently to avoid real or perceived conflicts of interest, bias, or threats to impartiality, the EEO Officer would delegate to the Ethics Officer the responsibility to retain an external investigator to conduct a fact-finding investigation. If the Ethics Officer has a conflict of interest in the particular case, the EEO Officer would delegate to the General Counsel the responsibility to retain an external investigator to conduct a fact-finding investigation. Substantiated findings would be reported directly to the ad hoc subcommittee for consideration of recommendations to the Board of Directors.
  - b. On a quarterly basis (starting in April 2023 to cover complaints received January-March 2023), the Chief EEO Officer will report to the Executive Committee EEO case statistics regarding EEO complaints filed against the Board and its direct reports.

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**Policy**

Metropolitan Water District Administrative Code Section 2416: Duties of Executive Committee

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

## California Environmental Quality Act (CEQA)

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### CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because it involves continuing administrative or maintenance activities that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the state CEQA Guidelines).

### CEQA determination for Option #2:

None required

## Board Options

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### Option #1

Approve revisions to Administrative Code Section 2416 as set forth in **Attachment 1** and **Attachment 2**.

**Fiscal Impact:** Unknown

**Business Analysis:** Enhancement and improvement of EEO-related policies and procedures.

### Option #2

Do not approve revisions to Administrative Code Section 2416 as set forth in **Attachment 1** and **Attachment 2**.

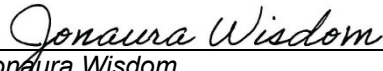

**Fiscal Impact:** Unknown

**Business Analysis:** Delays to enhancement and improvement of EEO-related policies and procedures.

## Staff Recommendation

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Option #1

 Jonaura Wisdom Chief Equal Employment Opportunity Officer	12/2/2022 Date
 Adel Hagekhalil General Manager	12/5/2022 Date

**Attachment 1 – Redline Version of Administrative Code Section 2416**

**Attachment 2 – Clean Version of Administrative Code Section 2416**

**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Article 2****EXECUTIVE COMMITTEE****§ 2416. Duties and Functions. [Executive Committee]**

(a) The Executive Committee shall study, advise, and make recommendations with regard to:

(1) Public information for governmental and other entities and officials, and for the citizens of California regarding matters affecting the District's interests;

(2) Official dealings with the United States Government, the State of California or other states, member public agencies or their sub-agencies, foreign governments and other entities or persons in matters of public policy or other activities as deemed appropriate;

(3) Policies and procedures to be considered by the Board or committees thereof, except for policy matters within the jurisdiction of a specific standing committee;

(4) Matters relating to the Colorado River Board of California;

(5) Major policy issues to be considered by the Board, including proposed amendments to the Metropolitan Water District Act;

(6) Questions raised by the officers and staff in intervals between meetings of the Board and in unexpected situations and emergencies.

(7) The terms and conditions of employment of all consultants and advisors not within the jurisdiction of other committees;

(8) Resolution of conflicting committee recommendations pursuant to §2314;

(9) The progress of, and propose modifications to, the Board's goals in light of then existing and projected future conditions; and

(10) Such other matters as may be required by Division II of this Code.

(b) The Executive Committee shall:

(1) Review and approve board and committee agendas and, notwithstanding the jurisdiction of the other standing committees in the Code, have the authority to direct which committee shall consider an item;

(2) Review and approve the scheduling of board and committee meetings;

(3) Be responsible for the oversight and management of the organization including, but not limited to, the form of the District's organization and the flow of the authority and responsibility. This includes monitoring and overseeing the duties and responsibilities of management; and

(4) Consider the effectiveness of the District's internal control system, including information technology security and control.

(c) The Executive Committee shall retain ultimate responsibility for those duties as are specifically assigned to the subcommittees of the Executive Committee.

(d) The Executive Committee shall be responsible for reviewing and approving the annual business plan containing the General Manager's key priorities for the coming year.

(e) As part of the Department Head annual evaluation process, the Executive Committee shall be responsible for engaging in periodic performance expectations discussions, including progress checks, with the General Manager.

(f) The Executive Committee shall also:

(1) Act on behalf of the Board in unexpected situations and emergencies, subject to subsequent approval or ratification of the actions taken whenever such approval or ratification is required by law.

(2) Provide policy guidance where appropriate to those directors and District staff members who are associated with organizations in which the District has membership.

(3) Conduct hearings on appeals of protest denials involving Purchasing Contracts and Professional and Technical Services Contracts pursuant to Section 8150(b).

(i) Hearings shall be held by the committee at its next regular meeting to be held at least 72 hours after the filing of the notice of appeal of the General Manager's determination under Section 8150(b). The decision of the committee shall be final unless the committee chooses to refer the notice of protest to the Board.

(ii) The Chair of the Executive Committee may re-delegate duties provided for under subparagraph (i) above to a minimum of three members of the Executive Committee who shall act in place of the committee.

(4) Resolve disputes over inspection dates and monitor conduct of inspection trips to assure maximum effectiveness.

(5) Address substantiated allegations of discrimination, harassment, and retaliation against directors, the General Manager, General Counsel, General Auditor, and Ethics Officer:

(i) The Executive Committee shall create an ad hoc subcommittee of three members and two alternates that will serve for a period of one year to address substantiated findings of violations determined as a result of Equal Employment Opportunity (EEO) investigations conducted for alleged violations of Section 2131 made against a director and for alleged violations to investigate any allegations of discrimination, harassment, or retaliation in violation of Section 2131 made against a director or allegations in violation of Section 6305 made against the General Manager, General Counsel, General Auditor, or Ethics Officer. If any director serving on the three-member subcommittee is an involved party to an EEO investigation, or has a conflict of interest with any involved party, the conflicted director shall recuse themselves from the matter. The Chief EEO Officer (EEO Officer) will select an alternate director to fulfill all subcommittee duties related to the particular matter. If the EEO Officer has a conflict of interest in the same matter, the Ethics Officer and/or General Counsel will select an alternate director. No director who is the subject of an allegation of discrimination, harassment, or retaliation shall be appointed to the subcommittee. Directors serving as alternates will not participate in ad hoc subcommittee matters unless or until called to serve.

(ii) The Executive Committee will also select an external law firm to serve as counsel to the ad hoc subcommittee to provide guidance, as needed, for post investigation actions.

(iii) The ad hoc subcommittee shall delegate to the EEO Officer the responsibility to designate an external investigator/law firm to conduct a fact-finding EEO investigation pursuant to this section. All EEO investigations will be fair, impartial, timely, and promptly initiated and completed by qualified personnel. Detailed EEO investigative procedures, pursuant to this section, can be found in *EEO Investigative Procedures for the Board and its Direct Reports*. The EEO Officer shall refer substantiated findings of EEO investigations, via an attorney client privileged communication, to the ad hoc subcommittee to determine recommended appropriate action. At its discretion, the ad hoc subcommittee may consult with its ad hoc subcommittee counsel, the EEO Officer, Ethics Officer, and/or General Counsel on appropriate action regarding a director or department head. The ad hoc subcommittee will share the findings and recommended action with the respondent of the investigation for an opportunity to respond. Appropriate action for directors may include, but is not limited to, counseling, training, a private warning letter, public censure, temporary or permanent removal from committee assignments, or referral to the Director's appointing authority requesting appropriate action. Appropriate action for department heads may include, but is not limited to, counseling, training, performance review, or the imposition of discipline, as deemed appropriate under the circumstances.

(iv) When the General Manager is a party to the complaint or when in the judgment of the EEO Officer the matter should be handled differently to avoid real or perceived conflicts of interest, or to avoid potential bias or threats to impartiality, the EEO Officer shall delegate to the Ethics Officer ~~or General Counsel~~ the responsibility to retain an external investigator to conduct a fact-finding EEO investigation pursuant to this section. If the Ethics Officer has a conflict of interest in the particular case, the EEO Officer would delegate to the General Counsel the responsibility to retain an external investigator to conduct a fact-finding investigation pursuant to this section. Substantiated EEO findings under this subsection shall be referred directly to the ad hoc subcommittee to determine recommended appropriate action for the Board's consideration.

(v) A deviation of this investigation protocol by the EEO Officer may occur, in certain circumstances, with a written justification and approval of the ad hoc subcommittee responsible for EEO investigations of directors and department head.

(vi) On a quarterly basis, the Chief EEO Officer will report to the Executive Committee EEO case statistics regarding EEO complaints filed against the Board and its direct reports.

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