

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

FINANCE, AUDIT, INSURANCE, AND REAL PROPERTY COMMITTEE

April 11, 2023

Chair Smith called the meeting to order at 9:30 a.m.

Members present: Directors Alvarez, Armstrong, Atwater, De Jesus, Dennstedt, Dick, Fong-Sakai (teleconference posted location), Miller (teleconference posted location), Pressman, Seckel, and Smith.

Members absent: Directors Chacon, Petersen, and Quinn.

Other Members present: Ackerman, Camacho, Erdman, Faessel, Kurtz, Morris, and Ortega.

Committee Staff present: Chapman, Hagekhalil, Kasaine, Quilizapa, Ros, Scully, Suzuki, Upadhyay.

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

None

2. SUBCOMMITTEE REPORTS

A. Subject: Report from Subcommittee on Audits

Director Armstrong overviewed the items discussed at the Subcommittee on Audits on March 28, 2023.

B. Subject: Report from Subcommittee on Long-Term Regional Planning Processes and Business Modeling

Director Atwater overviewed the items discussed at the Subcommittee on Long-Term Regional Planning Processes and Business Modeling on March 28, 2023.

CONSENT CALENDAR ITEMS — ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

- A. Subject: Approval of the Minutes of the Finance, Audit, Insurance, and Real Property Committee Meeting for March 13, 2023 (Copies have been submitted to each Director, Any additions, corrections, or omissions)

4. CONSENT CALENDAR ITEMS – ACTION

- 7-8 Subject: Approve and authorize the distribution of Appendix A for use in the issuance and remarketing of Metropolitan's Bonds; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Presented by: Samuel Smalls, Manager of Treasury and Debt Management
- Motion:
- a. Approve the draft of Appendix A (Attachment 1) attached to this board letter with a modification to page A-24 to delete the words, “and is owned by”,
 - b. Authorize the General Manager, or other designee of the Ad Hoc Committee, to finalize, with changes approved by the General Manager and General Counsel, Appendix A
 - c. Authorize distribution of Appendix A, finalized by the General Manager or other designee of the Ad Hoc Committee, in connection with the sale or remarketing of bonds

Ms. Kasaine introduced the item and Mr. Smalls presented the committee with a brief overview of Appendix A, the update process, and future updates.

Ms. Kasaine noted that a letter, dated April 10, 2023, was received from the San Diego County Water Authority delegation commenting on Item 7-8. This item will be made part of the record.

The following Directors provided comments or asked questions:

1. Miller
2. Peterson
3. Smith
4. Armstrong
5. Seckel
6. Pressman

Staff responded to Directors' comments and questions.

- 7-9 Subject: Adopt resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2024; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA
- Motion: Adopt resolutions fixing and adopting a Readiness-to-Serve Charge and a Capacity Charge for calendar year 2024
- 7-10 Subject: Review and consider the Lead Agency's adopted Mitigated 21-2064 Negative Declaration and Addendum and take related CEQA actions, and adopt resolution for 112th Fringe Area Annexation to Eastern Municipal Water District and Metropolitan; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA
- Motion: Review and consider the Lead Agency's adopted Mitigated Negative Declaration and Addendum and take related CEQA actions, and adopt resolution for the 112th Fringe Area Annexation concurrently to EMWD and Metropolitan.
- 7-11 Subject: Approve the award of a four-year contract for external audit services with Macias Gini O'Connell, LLP, for the not-to-exceed amount of \$1,600,090; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Presented by: Scott Suzuki, General Auditor
- Motion: Approve the award of a four-year contract for external audit services with Macias Gini O'Connell, LLP, for the not-to-exceed amount of \$1,600,090

Mr. Suzuki presented the committee with the background of external audit services and an overview of the agreement.

The following Directors provided comments or asked questions:

1. Miller
2. Peterson

Staff responded to Directors' comments and questions.

- 7-12 Subject: Approve proposed amendment to Administrative Code section 6450 regarding individual Board of Director requests for audit assignments; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Motion: Approve proposed amendment to Administrative Code Section 6450 regarding individual Board member requests for audit assignments

- 7-13 Subject: Authorize a credit of up to \$200,000 to Western Municipal Water District for treatment surcharge costs incurred due to the unexpected extension of a Metropolitan shutdown; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Motion: Authorize a credit of up to \$200,000 to Western Municipal Water District for treatment surcharge costs incurred due to the unexpected extension of a Metropolitan shutdown

After completion of the presentations, Director Dick made a motion, seconded by Director De Jesus, to approve the consent calendar consisting of items 3A, 7-8, 7-9, 7-10, 7-11, 7-12 and 7-13.

The vote was:

- Ayes: Directors Alvarez, Armstrong, Atwater, De Jesus, Dennstedt, Dick, Fong-Sakai, Miller, Pressman, Seckel, and Smith
- Noes: None
- Abstentions: None
- Absent: Directors Chacon, Petersen, and Quinn

The motion for items 3A, 7-8, 7-9, 7-10, 7-11, 7-12, 7-13 passed by a vote of 11 ayes, 0 noes, 0 abstain, and 3 absent.

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

None

6. BOARD INFORMATION ITEMS

9-3 Subject: Climate Adaptation Master Plan on water

Presenter: Liz Crosson, Chief Sustainability Resiliency & Innovation Officer

Ms. Kasaine introduced the item and Ms. Crosson presented to the committee with an overview of potential Board policy decisions, planning process, and upcoming workshops.

The following Directors provided comments or asked questions:

1. Seckel
2. Pressman
3. Smith
4. Ortega

Staff responded to Directors' comments and questions.

7. COMMITTEE ITEMS

a. Subject: Encroachment Update

Presented by: Gina Franco, Senior Real Estate Representative

Mr. Chapman introduced the item and Ms. Franco presented the committee with an overview of encroachment. Her presentation included encroachment by county, process, removal, and activity cost.

The following Directors provided comments or asked questions:

1. Smith
2. Faessel

Staff responded to Directors' comments and questions.

8. MANAGEMENT REPORTS

- a. Subject: Chief Financial Officer's report

No report given.

- b. Subject: General Auditor's Report

Mr. Suzuki updated the committee on revisions being made to the format and content for the audit report, revision on follow-up reporting, current department assessment, and revisions being made to the General Auditor's risk assessment process.

- c. Subject: Real Property Group Manager's Report

Mr. Chapman encouraged members to visit Diamond Valley Lake to see the wildflower bloom.

9. FOLLOW-UP ITEMS

None

10. FUTURE AGENDA ITEMS

None

11. ADJOURNMENT

The next meeting will be held on May 9, 2023.

Meeting adjourned at 10:56 a.m.

Timothy Smith
Chair

April 10, 2023

Adán Ortega, Chair
Members of the Board of Directors
Metropolitan Water District of Southern California
P. O. Box 54153
Los Angeles, CA 90054-00153

RE: Board Memo 7-8, Approve and authorize the distribution of Appendix A for use in the issuance and remarketing of Metropolitan's Bonds; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Dear Chair Ortega and Board Members:

This letter provides you with our principal concerns, questions and comments on the REVISED draft Appendix A (redline marked against prior distributed Appendix A of May 28, 2022) provided to the board last Thursday evening.

As you are aware, our overarching concern in the past has centered on our belief that Appendix A taken as a whole does not fairly describe the material risks and challenges MWD is facing due to reduced demand for MWD water, at the same time its historically low-cost water supplies are increasingly constrained. These concerns are heightened by the fact that MWD does not have a long range finance plan, and many billions of dollars of planned investment are not included in our 10-year rate forecast.

We believe some progress has been made over the past year acknowledging these factors, and we very much look forward to your continued leadership and the Board's planning processes now getting underway to begin to address these concerns.

Principal Concerns

A-6. State Audit of Workplace Concerns. We are not aware of any report that describes how MWD plans to fully implement all recommendations in the State Audit Report by this month (MWD's [State Audit webpage](#) says otherwise). Please describe or provide a copy of that plan or in the alternative, change the description in this section. We believe the State Audit Report presented recommendations that are vital to MWD's future success in its resolution of workplace concerns.

MEMBER AGENCIES

Carlsbad MWD • City of Del Mar • City of Escondido • Fallbrook Public Utility District • Helix Water District • Lakeside Water District • City of National City
City of Oceanside • Olivenhain MWD • Otay Water District • Padre Dam MWD • Camp Pendleton Marine Corps Base • City of Poway • Rainbow MWD
Ramona MWD • Rincon del Diablo MWD • City of San Diego • San Dieguito Water District • Santa Fe Irrigation District • Sweetwater Authority
Vallecitos Water District • Valley Center MWD • Vista Irrigation District • Yuima Municipal Water District

A-9 (and throughout Appendix A including projections at p. A-133). *Metropolitan's Water Supply*. Combining wheeling and exchange transactions with water sales is confusing if not misleading. As described in many prior letters, MWD water sales have declined substantially—in the hundreds of thousands of acre-feet—as a result of member agency investments including those made by the Water Authority. The revenue received by MWD for its transportation of the Water Authority's independent Colorado River water is not a MWD water sale.

A-8-14 (and in other parts of Appendix A including pp. A-56-57). *Metropolitan's Water Supply*. Appendix A repeatedly commingles the Water Authority's independent Colorado River water supplies with MWD's Colorado River supplies, but they are materially different in terms of water rights and priority. This is confusing if not misleading for reasons stated repeatedly by the Water Authority and confirmed by the California Court of Appeal.

A-14-18. *Integrated Water Resources Plan and Climate Change and Climate Action Plan*. We appreciate the statement that “the 2020 IRP utilizing this new [IRP] process is ongoing” (emphasis added), but we do not believe that the description in these sections accurately reports the pending Climate Action Master Plan for Water (unless we are mistaken, this central focus for our board is not mentioned anywhere in Appendix A). Indeed, the language still refers to the “One Water Implementation” phase of the IRP and essentially says the Climate Action Plan has already been completed.

A-28-29. *Colorado River Water Apportionment and Seven-Party Agreement*. The Appendix A draft has improperly added language describing the Water Authority's QSA water as “water made available to and owned by Metropolitan” (emphasis added). The phrase should be changed to read, “made available to Metropolitan,” deleting the statement that the water is “owned by Metropolitan.” Under California law, one has a right to the use of water, not its direct “ownership.” See *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC*, 14 Cal. App. 5th 343, which states at 403, citing the California Supreme Court: “Property interests in water instead take the form of a usufruct, i.e., a right to use. ‘It is laid down by our law writers, that the right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use.’ [Citation.] Hence, the cases do not speak of the ownership of water, but only of the right to its use.” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441 [189 Cal. Rptr. 346, 658 P.2d 709] (*Audubon Society*).) See also the Court of Appeal decision in *SDCWA v. MWD*, 12 Cal.App.4th 1124, 1156 (2017) (“The purpose, structure and terms of the [Exchange Agreement] make it clear that the Water Authority is not purchasing water from Metropolitan but from Imperial. As the trial court rightly discerned, the Water Authority is exchanging water with Metropolitan ‘to make use of its own independent supplies’” (emphasis added). In short, neither party “owns” the QSA water, and it is the Water Authority that has the right to use of its QSA and canal lining water, not MWD. Finally, this statement is incorrect because under the Exchange Agreement, the conserved water made available to Metropolitan is expressly stated to be the local water of the San Diego County

Water Authority for all purposes other than price and a now-defunct agricultural program at Metropolitan. For all of these reasons, Appendix A is in material error on this point.

A-31. *Quantification Settlement Agreement*. As a subsection of the main header, “Metropolitan’s Water Supply (p. A-8), this section is confusing if not misleading by omitting the Water Authority as a party to the QSA (presumably included as “others”) and failing to note the lining of the All-American and Coachella Canals were completed in 2009 by the Water Authority, not MWD.

A-76. *Capital Investment Plan Financing*. What assumptions or other analysis supports the projected increase in the sale of bonds by more than \$700 million when only one additional year is being added (from \$1,040 million for 2022-23 through 2026-27 to the revised \$1,710 million for 2022-23 through 2027-28)?

A-80-99. *Water Revenues, Rates, Programs, Constitutional Limitations and Litigation Challenging Rate Structure*. The Water Authority is hopeful that all rate issues and concerns will successfully be addressed as part of upcoming board processes including an updated water resources investment plan, long range finance plan, cost of service and rate review as long-promised and planned. We believe past rate-setting disputes have derived largely from the incorrect assumption that MWD is not legally required to follow cost of service principles and is not bound by Constitutional limitations that apply to other retail and wholesale water suppliers. We object to many of the descriptions in this part of Appendix A as they are litigation driven.

A-81. *Summary of Water Transactions and Revenues, footnote 1*. What is the basis for the change that as of June 30, 2021, “Water Transactions” do not include third parties?

A-82-85. *Tier 1 and Tier 2 Water Supply Rates and Member Agency Purchase Orders*. We believe it is important to disclose the miniscule amount of Tier 2 water rates MWD has received since January 1, 2015 (date of the new purchase orders). If not added to the disclosure, please provide this information in response to this letter.

A-92. *Proposition 26*. The draft states that it is difficult to determine whether stricter standards would impose stricter standards on MWD due to “uncertainties of evolving case law and potential future judicial interpretations of Proposition 26.” But at a minimum, Appendix A should include the following language from Article XIII C, section 1 of the California Constitution which expressly states the standard about which there is no “uncertainty” given a ruling that the Constitutional limitation applies to MWD: “the local government bears the burden of proving by a preponderance of the evidence that a levy, charge or other extraction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”

A-95. *The 2014, 2016 and 2018 Cases*. The language should be updated to indicate that the Water Authority has filed objections to the tentative decision, and that if the objections are overruled and the tentative decision is confirmed, the decision will be subject to appeal. A copy of the Water Authority's objections may be found [here](#).

Other Comments and Questions

A-5. *Employee Relations*. Why has staff deleted the sentence describing total positions filled and under recruitment? Deletion of this sentence leaves the reference in the following sentence ("of the filled positions") unclear. We suggest you leave the sentence in and update the numbers. If you do not choose to do that, please provide the updated information in response to this letter.

A-20 (and throughout Appendix A). *Project Improvement Amendments*. What is the intended significance of changing "State Water Contractors" to "State Water Project contractors?"

A-22. *Amendments for Allocation of Conveyance Costs*. Please provide a copy of the last board report on the status of the amendments as described.

A-49. *Metropolitan's Water Storage Capacity and Water in Storage*. A footnote should be added to reflect MWD's Drought Contingency Plan obligations that may restrict its ability to withdraw water from Lake Mead, especially since this is an ongoing issue under discussion and negotiations with other states.

A-61-62. *Seawater Desalination*. What is staff's understanding of the current status of the availability of LRP incentives? And what is the basis of the described board policy that applications for potential projects will be considered by MWD's board "after they are permitted, free of litigation, and authorized to proceed by their developing agencies?"

We appreciate your consideration of our concerns and providing a response to our questions.

Sincerely,



Lois Fong-Sakai
Director



Marty Miller
Director



Tim Smith
Director

cc: Adel Hagekhalil, General Manager, MWD
Sandra Kerl, General Manager, San Diego County Water Authority
San Diego County Water Authority Board of Directors