The Metropolitan Water District of Southern California

Agenda

The mission of the Metropolitan Water District of Southern California is to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

L&C Committee
N. Sutley, Chair
M. Camacho
G. Cordero
L. D. Dick
C. Kurtz
T. McCoy
C. Miller
G. Peterson
M. Ramos
H. Repenning

Legal and Claims Committee

Meeting with Board of Directors *

February 13, 2023

8:00 a.m.

Monday, February 13, 2023
Meeting Schedule

08:00 a.m. LC
09:00 a.m. BOD
09:30 a.m. Break
10:00 a.m. BOD Retreat

Agendas, live streaming, meeting schedules, and other board materials are available here: https://mwdh2o.legistar.com/Calendar.aspx. A listen only phone line is available at 1-877-853-5257; enter meeting ID: 831 5177 2466. Members of the public may present their comments to the Board or a Committee on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference (833) 548-0276 and enter meeting ID: 815 2066 4276.

ZOOM Online and Temecula Creek Inn 44501 Rainbow Canyon Road, Temecula, CA 92592

* The Metropolitan Water District's meeting of this Committee is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to this Committee may participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to this Committee will not vote on matters before this Committee.

1. Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))

2. MANAGEMENT REPORTS

a. General Counsel's report of monthly activities **21-1917**

Attachments: 02142023 LC 2A Report

**** CONSENT CALENDAR ITEMS -- ACTION ****

3. CONSENT CALENDAR OTHER ITEMS - ACTION

NONE

4. CONSENT CALENDAR ITEMS - ACTION

7-4 Report on Baker Electric, Inc. v. Metropolitan Water District of Southern California, et al., (Los Angeles Superior Court Case No. 21STCV15612) regarding Metropolitan's CRA 6.9 kV Power Cables Replacement Project, Contract No. 1915; authorize an increase in the maximum amount payable under contract with Musick, Peeler & Garrett LLP, for legal services by $800,000 to an amount not-to-exceed $1,700,000; and authorize an increase in the maximum amount payable under contract with HKA Global, Inc., for consulting services by $300,000 to an amount not-to-exceed $400,000; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] **21-1912**

7-5 Report on American Federation of State, County & Municipal Employees Local 1902 v. Metropolitan Water District of Southern California pending Administrative Hearing Officer Appeal and authorize an increase in the maximum amount payable under contract for legal services with Renne Public Law Group by $100,000 to an amount not to exceed $200,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] **21-1913**

7-6 Update on Sierra Club et al. v. California Department of Water Resources, Sacramento County Superior Court Case No. 34-2020-80003517 (consolidated with 34-2020-00283112) and request for authorization to increase maximum amount payable under a contract with Atkinson, Andelson, Loya, Ruud & Romo, PLC by $150,000 to an amount not to exceed $250,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] **21-1916**

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

5. OTHER BOARD ITEMS - ACTION

8-1 Report on litigation in San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014, 2016, and 2018 actions; and consider San Diego County Water Authority's proposal: (1) to stipulate to stay proceedings in the 2014, 2016, and 2018 actions; and (2) to engage in settlement negotiations prior to issuance of the court's statement of decision in those actions; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] **21-1933**

6. BOARD INFORMATION ITEMS

NONE

7. COMMITTEE ITEMS

a. Update on the current status of Colorado River Negotiations **21-1927**

[Conference with legal counsel – anticipated litigation; based on existing facts and circumstances, including that requiring significant water use reductions in relation to the Supplemental Environmental Impact Statement for the 2007 Guidelines could lead to litigation among the United States and one or more Colorado River water users; there is a significant exposure to litigation against Metropolitan: unknown number of potential cases; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(2)].

Attachments: 02132023 LC 7a Presentation

8. FOLLOW-UP ITEMS

NONE

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

NOTE: This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site https://mwdh2o.legistar.com/Calendar.aspx.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.

Metropolitan Cases

Hearing Officer Appeal Matter - Discipline

On July 29, 2021 and after an administrative investigation, Metropolitan discharged an employee for reporting to work under the influence of marijuana, falsifying the results of a for-cause drug test, and making false statements during Metropolitan's misconduct investigation of the incident. While Metropolitan typically issues a 30-day suspension for the first time offense of reporting to work under the influence of drugs or alcohol, in this matter the employee was discharged due to the aggravating circumstances involving his alleged dishonesty. AFSCME Local 1902 appealed the discharge and the matter proceeded to hearing. Fourteen witnesses testified over the course of the contested five-day appeal hearing before a neutral hearing officer. On January 25, 2023, the hearing officer issued a decision concluding the appealing employee was under the influence in the workplace, but that Metropolitan did not prove by a preponderance of the evidence that the employee falsified a drug test or was dishonest about the drug test during his investigatory interview.

In light of these factual conclusions, the hearing officer lowered the discipline to the 30-day suspension issued to first-time offenders and consequently reinstated the employee.

Hearing Officer Appeal Matter - Grievance

On August 31, 2021, AFSCME Local 1902 filed a grievance alleging that an employee was erroneously denied callback pay. Metropolitan denied the grievance and on March 15, 2022, Local 1902 appealed Metropolitan's decision. The matter proceeded to hearing before a neutral hearing officer and a one-day hearing was held. During the hearing, Local 1902 contended that an employee on standby should have been called back to perform work and instead a manager performed the work. Metropolitan contended that the manager was performing his duty of reviewing the work of his team and that any work performed by the manager was de minimis.

On December 29, 2022, the hearing officer issued a decision in which she concluded that the work performed by the manager should have been performed by a standby employee and not the manager. Based on that factual conclusion, the hearing officer awarded the appealing employee 4 hours of callback pay.

Matters Concluded and/or Terminated

Worker's Compensation Claim

Worker's compensation claim filed by a Senior Engineering Technician who retired from Metropolitan in 2017 settled for $85,000.

Matters Received

Category	Received	Description	
Government Code Claims	1	Claim relating to an accident involving an MWD vehicle	
Requests Pursuant to the Public Records Act	6	Requestor	Documents Requested
		CCS Global Tech	Request for proposal, proposals, scoring sheet, and contract documents for On-Call Information Technology Services

Date of Report: January 31, 2023

Requestor	Documents Requested
Cypress Equity Investments	List of cities served by MWD and types of rebates offered for new construction of multifamily projects
Delane Engineering	MWD record drawing for pipeline near Avenue 64 and Garvanza in the area of Highland Park
Deltek	Contract documents for Greenhouse Gas Emissions Inventory Verifications
Private Citizen	Water usage records for property in Burbank
Southern California Labor/Management Operating Engineers Contract Compliance Committee	Bid and contract documents for project near 14301 San Fernando Road in Granada Hills

PLEASE NOTE

- ADDITIONS ONLY IN THE FOLLOWING TWO TABLES WILL BE SHOWN IN RED.
- ANY CHANGE TO THE *OUTSIDE COUNSEL AGREEMENTS* TABLE WILL BE SHOWN IN REDLINE FORM (I.E., ADDITIONS, REVISIONS, DELETIONS).

Bay-Delta and SWP Litigation

Consolidated DCP Revenue Bond Validation Action and CEQA Case

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

DWR v. All Persons Interested (Validation)

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

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

  Dec. 9, 2022 DWR's motion for summary adjudication of Delta Reform Act and public trust doctrine affirmative defenses granted; NCRA's motion for summary judgment re same denied
  - Trial on the merits set for May 15-18, 2023
- **CEQA Case**
  - Sierra Club, Center for Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge filed a standalone CEQA lawsuit challenging DWR's adoption of the bond resolutions
  - Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project
  - Cases ordered consolidated for all purposes
  - DWR's motion for summary judgment granted; Sierra Club's motion denied
  -

Subject	Status
SWP-CVP 2019 BiOp Cases *Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Raimondo, et al.* (*PCFFA*) *Calif. Natural Resources Agency, et al. v. Raimondo, et al.* (*CNRA*) Federal District Court, Eastern Dist. of California, Fresno Division (Judge Thurston)	• SWC intervened in both *PCFFA and CNRA* cases • Federal defendants reinitiated consultation on Oct 1, 2021 • September 30, 2022, Federal Defendants and State Plaintiffs filed a joint status report: 1) describing the status of the reinitiated CVP and SWP consultation; 2) recommending a plan for interim CVP and SWP operations to govern for the 2023 water year or some other interval of time, if consultation remains ongoing; and 3) requesting a continued stay or other path forward in the litigation • PCFFA et al. proposed an alternative 2023 interim operations plan • December 22, 2022 conclusion of briefing re 2023 interim operations plan and potential stay • January 2023 Court ordered federal defendants and state plaintiffs to provide an update on water supplies in early February to determine if a 2023 Interim Operations Plan is needed
CESA Incidental Take Permit Cases **Coordinated Case Name *CDWR Water Operations Cases*, JCCP 5117** **(Coordination Trial Judge Gevercer)** *Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al*. (CESA/CEQA/Breach of Contract) *State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al*. (CESA/CEQA) *Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources* (CEQA) *San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al.* (CEQA/CESA/ Breach of Contract/Takings) *Sierra Club, et al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust)	• All 8 cases ordered coordinated in Sacramento County Superior Court • Stay on discovery issued until coordination trial judge orders otherwise • All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases • Certified administrative records lodged March 4, 2022 • State Water Contractors et al. granted leave to intervene in Sierra Club, North Coast Rivers Alliance, Central Delta Water Agency, and San Francisco Baykeeper cases by stipulation • Sept. 9, 2022 fifth Case Management Conference • Sept. 9, 2022 Court ordered DWR and CDFW to produce privilege logs to the State Water Contractors et al. by Sept. 30, 2022 showing the basis for withholding hundreds of records from the administrative records on the deliberative process and official information privileges, then meet and confer; State Water

North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust) *Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin) *San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al*. (CEQA/CESA)	Contractors et al. may renew their motion to augment if disputes remain • SWC, et al. granted leave to intervene as respondents in *Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources* CEQA case • Feb. 10, 2023 hearing on SWC's renewed motion to augment the administrative records
CDWR Environmental Impact Cases **Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C091771** **(20 Coordinated Cases)** Validation Action *DWR v. All Persons Interested* CEQA 17 cases CESA/Incidental Take Permit 2 cases (Judge TBD)	• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Nine motions for attorneys' fees and costs denied in their entirety • Parties have appealed attorneys' fees and costs rulings • May 11, 2022, court of appeal reversed the trial court's denial of attorney fees and costs in an unpublished opinion • Opinion ordered published • Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal's opinion
COA Addendum/ **No-Harm Agreement** *North Coast Rivers Alliance v. DWR* Sacramento County Superior Ct. (Judge Gevercer)	• Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC monitoring • Deadline to prepare administrative record extended to Nov. 18, 2022

Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Gevercer) *North Coast Rivers Alliance, et al. v. Delta Stewardship Council* (lead case) *Central Delta Water Agency, et al. v. Delta Stewardship Council* *Friends of the River, et al. v. Delta Stewardship Council* *California Water Impact Network, et al. v. Delta Stewardship Council*	• Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure to further the coequal goals • Allegations relating to "Delta pool" water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies • Cases consolidated for pre-trial and trial under *North Coast Rivers Alliance v. Delta Stewardship Council* • SWC granted leave to intervene • Metropolitan supports SWC **2018 Cases** • Nov. 7, 2022 court ruled in favor of Delta Stewardship Council on all claims • Orders denying all claims and final judgments entered Nov. 22, 2022 • Notices of entry of judgment filed Dec. 20, 2022
SWP Contract Extension Validation Action Court of Appeal for the Third App. Dist. Case No. C096316 *DWR v. All Persons Interested in the Matter, etc.*	• DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 7 other SWCs filed answers in support of validity to become parties • Jan. 5-7, 2022 Hearing on the merits held with CEQA cases, below • Final statement of decision in DWR's favor filed March 9, 2022 • Final judgment entered and served • C-WIN et al., County of San Joaquin et al. and North Coast Rivers Alliance et al. filed notices of appeal • Validation and CEQA cases consolidated on appeal • Briefing schedule set by stipulation with estimated completion in April or May 2023
SWP Contract Extension CEQA Cases Court of Appeal for the Third App. Dist. Case Nos. C096384 & C096304 *North Coast Rivers Alliance, et al. v. DWR* *Planning & Conservation League, et al. v. DWR*	• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • Deemed related to DWR's Contract Extension Validation Action and assigned to Judge Culhane • Administrative Record completed • DWR filed its answers on September 28, 2020

	• Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases • Final statement of decision in DWR's favor denying the writs of mandate filed March 9, 2022 • Final judgments entered and served • North Coast Rivers Alliance et al. and PCL et al. filed notices of appeal • Appeals consolidated with the validation action above
Delta Conveyance Project Soil Exploration Cases *Central Delta Water Agency, et al. v. DWR* Sacramento County Superior Ct. (Judge Chang) *Central Delta Water Agency, et al. v.. DWR (II)*, Sacramento County Super. Ct. (Judge Acquisto)	• Original case filed August 10, 2020; new case challenging the second addendum to the CEQA document filed Aug. 1, 2022 • Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta • One cause of action alleging that DWR's adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) for soil explorations needed for the Delta Conveyance Project violates CEQA • March 24, 2021 Second Amended Petition filed to add allegation that DWR's addendum re changes in locations and depths of certain borings violates CEQA • DWR's petition to add the 2020 CEQA case to the *Department of Water Resources Cases*, JCCP 4594, San Joaquin County Superior Court denied • Hearing on the merits held Oct.13, 2022 • Dec. 2, 2022 ruling on the merits granting the petition with respect to two mitigation measures and denying on all other grounds • Dec. 23, 2022 court order directing DWR to address the two mitigation measures within 60 days while declining to order DWR to vacate the IS/MND • Jan. 25, 2023 DWR filed the return on the writ with the amended mitigation measures and moved to discharge the writ
Water Management Tools Contract Amendment	• Filed September 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA

California Water Impact Network et al. v. DWR Sacramento County Superior Ct. (Judge Aquisto) *North Coast Rivers Alliance, et al. v. DWR* Sacramento County Super. Ct. (Judge Aquisto)	• NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief • SWC motion to intervene in both cases granted • Dec. 20, 2022 DWR filed notice of certification of the administrative record and filed answers in both cases

San Diego County Water Authority v. Metropolitan, et al.		
Cases	**Date**	**Status**
2010, 2012	Aug. 13-14, 2020	Final judgment and writ issued. Transmitted to the Board on August 17.
	Sept. 11	Metropolitan filed notice of appeal of judgment and writ.
	Jan. 13, 2021	Court issued order finding SDCWA is the prevailing party on the Exchange Agreement, entitled to attorneys' fees and costs under the contract.
	Feb. 10	Court issued order awarding SDCWA statutory costs, granting SDCWA's and denying Metropolitan's related motions.
	Feb. 16	Per SDCWA's request, Metropolitan paid contract damages in 2010-2012 cases judgment and interest. Metropolitan made same payment in Feb. 2019, which SDCWA rejected.
	Feb. 25	Metropolitan filed notice of appeal of Jan. 13 (prevailing party on Exchange Agreement) and Feb. 10 (statutory costs) orders.
	Sept. 21	Court of Appeal issued opinion on Metropolitan's appeal regarding final judgment and writ, holding: (1) the court's 2017 decision invalidating allocation of Water Stewardship Rate costs to transportation in the Exchange Agreement price and wheeling rate applied not only to 2011-2014, but also 2015 forward; (2) no relief is required to cure the judgment's omission of the court's 2017 decision that allocation of State Water Project costs to transportation is lawful; and (3) the writ is proper and applies to 2015 forward.
	Mar. 17, 2022	Court of Appeal unpublished decision affirming orders determining SDCWA is the prevailing party in the Exchange Agreement and statutory costs.
	Mar. 21	Metropolitan paid SDCWA $14,296,864.99 for attorneys' fees and $352,247.79 for costs, including interest.
	July 27	Metropolitan paid SDCWA $411,888.36 for attorneys' fees on appeals of post-remand orders.
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.

Cases	Date	Status
2014, 2016 (cont.)	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the demurrers and motions to strike.
	Feb. 16, 2021	Court issued order denying Metropolitan's demurrers and motions to strike, allowing SDCWA to retain contested allegations in amended petitions/complaints.
	March 22	Metropolitan filed answers to the amended petitions/complaints and cross-complaints against SDCWA for declaratory relief and reformation, in the 2014, 2016 cases.
	March 22-23	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the amended petitions/complaints in the 2014, 2016 cases.
	April 23	SDCWA filed answers to Metropolitan's cross-complaints.
	Sept. 30	Based on the Court of Appeal's Sept. 21 opinion (described above), and the Board's Sept. 28 authorization, Metropolitan paid $35,871,153.70 to SDCWA for 2015-2017 Water Stewardship Rate charges under the Exchange Agreement and statutory interest.
2017	July 23, 2020	Dismissal without prejudice entered.
2018	July 28, 2020	Parties filed a stipulation and application to designate the case complex and related to the 2010-2017 cases, and to assign the case to Judge Massullo's court.
	Nov. 13	Court ordered case complex and assigned to Judge Massullo's court.
	April 21, 2021	SDCWA filed second amended petition/complaint.
	May 25	Metropolitan filed motion to strike portions of the second amended petition/complaint.
	May 25-26	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the motion to strike.

Cases	Date	Status
2018 (cont.)	July 19	Court issued order denying Metropolitan's motion to strike portions of the second amended petition/complaint.
	July 29	Metropolitan filed answer to the second amended petition/complaint and cross-complaint against SDCWA for declaratory relief and reformation.
	July 29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the second amended petition/complaint.
	Aug. 31	SDCWA filed answer to Metropolitan's cross-complaint.
	April 11, 2022	Court entered order of voluntary dismissal of parties' WaterFix claims and cross-claims.
2014, 2016, 2018	June 11, 2021	Deposition of non-party witness.
	Aug. 25	Hearing on Metropolitan's motion for further protective order regarding deposition of non-party witness.
	Aug. 25	Court issued order consolidating the 2014, 2016, and 2018 cases for all purposes, including trial.
	Aug. 30	Court issued order granting Metropolitan's motion for a further protective order regarding deposition of non-party witness.
	Aug. 31	SDCWA filed consolidated answer to Metropolitan's cross-complaints in the 2014, 2016, and 2018 cases.
	Oct. 27	Parties submitted to the court a joint stipulation and proposed order staying discovery through Dec. 8 and resetting pre-trial deadlines.
	Oct. 29	Court issued order staying discovery through Dec. 8 and resetting pre-trial deadlines, while the parties discuss the prospect of settling some or all remaining claims and crossclaims.
	Jan. 12, 2022	Case Management Conference. Court ordered a 35-day case stay to allow the parties to focus on settlement negotiations, with weekly written check-ins with the court; and directed the parties to meet and confer regarding discovery and deadlines.
	Feb. 22	Court issued order resetting pre-trial deadlines as proposed by the parties.
	Feb. 22	Metropolitan and SDCWA each filed motions for summary adjudication.

Cases	Date	Status
2014, 2016, 2018 (cont.)	April 13	Hearing on Metropolitan's and SDCWA's motions for summary adjudication.
	April 18	Parties filed supplemental briefs regarding their respective motions for summary adjudication, as directed by the court.
	April 18	Court issued order resetting pre-trial deadlines as proposed by the parties.
	April 29	Parties filed pre-trial briefs.
	April 29	Metropolitan filed motions in limine.
	May 4	Court issued order granting Metropolitan's motion for summary adjudication on cross-claim for declaratory relief that the conveyance facility owner, Metropolitan, determines fair compensation, including any offsetting benefits; and denying its motion on certain other cross-claims and an affirmative defense.
	May 11	Court issued order granting SDCWA's motion for summary adjudication on cross-claim for declaratory relief in the 2018 case regarding lawfulness of the Water Stewardship Rate's inclusion in the wheeling rate and transportation rates in 2019-2020; certain cross-claims and affirmative defenses on the ground that Metropolitan has a duty to charge no more than fair compensation, which includes reasonable credit for any offsetting benefits, with the court also stating that whether that duty arose and whether Metropolitan breached that duty are issues to be resolved at trial; affirmative defenses that SDCWA's claims are untimely and SDCWA has not satisfied claims presentation requirements; affirmative defense in the 2018 case that SDCWA has not satisfied contract dispute resolution requirements; claim, cross-claims, and affirmative defenses regarding applicability of Proposition 26, finding that Proposition 26 applies to Metropolitan's rates and charges, with the court also stating that whether Metropolitan violated Proposition 26 is a separate issue; and cross-claims and affirmative defenses regarding applicability of Government Code section 54999.7, finding that section 54999.7 applies to Metropolitan's rates. Court denied SDCWA's motion on certain other cross-claims and affirmative defenses.
	May 13	Pre-trial conference; court denied Metropolitan's motions in limine.
	May 16	Court issued order setting post-trial brief deadline and closing arguments.
	May 16-27	Trial occurred but did not conclude.
	May 23, June 21	SDCWA filed motions in limine.

Cases	Date	Status
2014, 2016, 2018 (cont.)	May 26, June 24	Court denied SDCWA's motions in limine.
	June 3, June 24, July 1	Trial continued, concluding on July 1.
	June 24	SDCWA filed motion for partial judgment.
	July 15	Metropolitan filed opposition to motion for partial judgment.
	Aug. 19	Post-trial briefs filed.
	Sept. 14	Court issued order granting in part and denying in part SDCWA's motion for partial judgment (granting motion as to Metropolitan's dispute resolution, waiver, and consent defenses; denying motion as to Metropolitan's reformation cross-claims and mistake of fact and law defenses; and deferring ruling on Metropolitan's cost causation cross-claim).
	Sept. 21	Metropolitan filed response to order granting in part and denying in part SDCWA's motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	Sept. 22	SDCWA filed objection to Metropolitan's response to order granting in part and denying in part SDCWA's motion for partial judgment.
	Sept. 27	Post-trial closing arguments.
	Oct. 20	Court issued order that it will rule on SDCWA's motion for partial judgment as to Metropolitan's cost causation cross-claim simultaneously with the trial statement of decision.
	Dec. 16	The parties' filed proposed trial statements of decision.
	Dec. 21	SDCWA filed the parties' stipulation and proposed order for judgment on Water Stewardship Rate claims for 2015-2020.
	Dec. 27	Court entered order for judgment on Water Stewardship Rate claims for 2015-2020 as proposed by the parties.
All Cases	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.
	April 27	SDCWA served notice of deposition of non-party witness.
	May 13-14	Metropolitan filed motions to quash and for protective order regarding deposition of non-party witness.
	June 4	Ruling on motions to quash and for protective order.

Outside Counsel Agreements				
Firm Name	**Matter Name**	**Agreement No.**	**Effective Date**	**Contract Maximum**
Andrade Gonzalez LLP	MWD v. DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	$250,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	$1,214,517
	~~MWD v. Collins~~	~~185892~~	~~06/20~~	~~$100,000~~
	Delta Conveyance Project Bond Validation-CEQA Litigation	185899	09/21	$100,000
	MWD Drone and Airspace Issues	193452	08/20	$50,000
	Equal Employee Opportunity Commission Charge	200462	03/21	$20,000
	~~Representation re the Shaw Law Group's Investigations~~	~~200485~~	~~05/20/21~~	~~$50,000~~
	DFEH Charge (DFEH Number 202102-12621316)	201882	07/01/21	$25,000
	AFSCME Local 1902 in Grievance No. 1906G020 (CSU Meal Period)	201883	07/12/21	$30,000
	AFSCME Local 1902 v. MWD, PERB Case No. LA-CE-1438-M	201889	09/15/21	$20,000
	MWD MOU Negotiations**	201893	10/05/21	$100,000
	~~DFEH Charge (DFEH Number 202106-13819209)~~	~~203439~~	~~12/14/21~~	~~$15,000~~
	DFEH Charge (DFEH Number 202109-14694608)	203460	02/22	$15,000

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	$185,000
	Bay-Delta Conservation Plan/Delta Conveyance Project (with SWCs)	170697	08/17	$500,000
	Environmental Compliance Issues	185888	05/20	$100,000
	~~Public Records Act Requests~~	~~203462~~	~~04/22~~	~~$30,000~~
	Pure Water Southern California	207966	11/22	$100,000
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	$100,000
Brown White & Osborn LLP	HR Matter	203450	03/22	$50,000
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	$50,000
Burke, Williams & Sorensen, LLP	Real Property – General	180192	01/19	$100,000
	Labor and Employment Matters	180207	04/19	$50,000
	General Real Estate Matters	180209	08/19	$100,000
	Rancho Cucamonga Condemnation Actions (Grade Separation Project)	207970	05/22	$100,000
Law Office of Alexis S.M. Chiu*	Bond Counsel	200468	07/21	N/A
Cislo & Thomas LLP	Intellectual Property	170703	08/17	$75,000
Cummins & White, LLP	Board Advice	207941	05/22	$10,000
Curls Bartling P.C.*	~~Bond Counsel~~	~~174596~~	~~07/18~~	~~N/A~~
	Bond Counsel	200470	07/21	N/A
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	$615,422
Duncan, Weinberg, Genzer & Pembroke PC	Power Issues	6255	09/95	$3,175,000

Date of Report: January 31, 2023

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Ellison, Schneider, Harris & Donlan	Colorado River Issues	69374	09/05	$175,000
	Issues re SWRCB	84457	06/07	$200,000
Greines, Martin, Stein & Richland LLP	SDCWA v. MWD	207958	10/22	$100,000
	Colorado River Matters	207965	11/22	$100,000
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	$50,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	$1,100,000
	Finance Advice	158024	12/16	$100,000
	Deferred Compensation/HR	170706	10/17	~~$ 400,000~~ $500,000
	Tax Issues	180200	04/19	$50,000
	Alternative Project Delivery (ADP)	207961	10/22	$100,000
	Faith v. MWD	207963	10/22	$100,000
Hausman & Sosa, LLP	MOU Hearing Officer Appeal	201892	09/21	$95,000
	MOU Hearing Officer Appeal	207943	05/22	$25,000
	MOU Hearing Officer Appeal	207949	07/22	$25,000
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
Horvitz & Levy	SDCWA v. MWD	124100	02/12	$1,250,000
	General Appellate Advice	146616	12/15	$100,000
	Colorado River	203464	04/22	$100,000
Internet Law Center	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	$65,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A

Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance (OFCCP)	137992	02/14	$45,000
Firm Name	**Matter Name**	**Agreement No.**	**Effective Date**	**Contract Maximum**
Jones Hall, A Professional Law Corporation*	Bond Counsel	200465	07/21	N/A
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	$250,000
Kutak Rock LLP	Delta Islands Land Management	207959	10/22	$10,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	$201,444
	FLSA Audit	180199	02/19	$50,000
Manatt, Phelps & Phillips	SDCWA v. MWD rate litigation	146627	06/16	$4,400,000
	Raftelis - Subcontractor of Manatt, Phelps & Phillips Agreement No. 146627: Pursuant to 05/02/22 Engagement Letter between Manatt, Phelps & Phillips and Raftelis Financial Consultants, Inc., Metropolitan Water District paid Raftelis Financial Consultants, Inc.	Invoice No. 23949		$56,376.64 for expert services and reimburs-able expenses in SDCWA v. MWD
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	$2,300,000
	Pure Water Southern California	207967	11/22	$100,000
Miller Barondess, LLP	SDCWA v. MWD	138006	12/14	$600,000
Morgan, Lewis & Bockius	SDCWA v. MWD	110226	07/10	$8,750,000
	Project Labor Agreements	200476	04/21	$100,000
Musick, Peeler & Garrett LLP	Colorado River Aqueduct Electric Cables Repair/Contractor Claims	193461	11/20	$900,000
	Arvin-Edison v. Dow Chemical	203452	01/22	$90,000
	Semitropic TCP Litigation	207954	09/22	$75,000
Nixon Peabody LLP*	Bond Counsel	193473	07/21	N/A
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A

Date of Report: January 31, 2023

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Olson Remcho LLP	Government Law	131968	07/14	$200,000
	Executive Committee/Ad Hoc Committees Advice	207947	08/22	$60,000
	Public Records Act	207950	08/22	$20,000
Renne Public Law Group, LLP	ACE v. MWD (PERB Case No. LA-CE-1574-M)	203466	05/22	$50,000
	MOU Hearing Officer Appeal	203948	07/22	~~$25,000~~ $100,000
	ACE v. MWD (PERB Case No. LA-CE-1611-M)	207962	10/22	$50,000
Ryan & Associates	Leasing Issues	43714	06/01	$200,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	$250,000
	Claim (Contract #201897)	201897	11/04/21	$200,000
	Claim (Contract #203436)	203436	11/15/21	$350,000
	Claim (Contract #203454)	203454	01/22	$160,000
	Claim (Contract #203455)	203455	10/21	$175,000
Sheppard Mullin Richter & Hampton LLP	Rivers v. MWD	207946	07/22	$100,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringher PC	Construction Contracts - General Conditions Update	185896	07/20	$100,000
~~Thomas Law Group~~	~~Iron Mountain SMARA (Surface Mining and Reclamation Act)~~	~~203435~~	~~12/03/21~~	~~$100,000~~
Thompson Coburn LLP	FERC Representation re Colorado River Aqueduct Electrical Transmission System	122465	12/11	$100,000
	NERC Energy Reliability Standards	193451	08/20	$100,000

Date of Report: January 31, 2023

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Van Ness Feldman, LLP	General Litigation	170704	07/18	$50,000
	Colorado River MSHCP	180191	01/19	$50,000
	Bay-Delta and State Water Project Environmental Compliance	193457	10/15/20	$50,000
Western Water and Energy	California Independent System Operator Related Matters	193463	11/20/20	$100,000

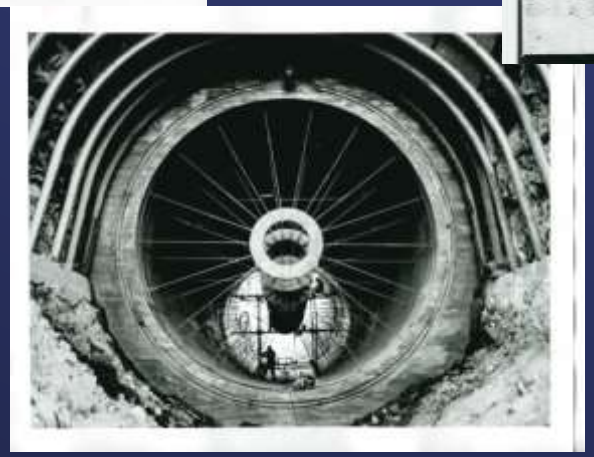
*Expenditures paid by Bond Proceeds/Finance
**Expenditures paid by another group

Date of Report: January 31, 2023

Legal and Claims Committee

Update on the Current Status of Colorado River Negotiations

Item 7a
February 13, 2023



Metropolitan's Mission – Building the Colorado River Aqueduct

Aqueduct built to convey 1.25 MAF per year and Colorado River deliveries began in 1941.

Building Resiliency on the Colorado River for Three Decades

Transfer and Exchanges

- 1988 IID-MWD Conservation Program
- 2003 SDCWA Exchange Agreement
- 2005 PVID Fallowing Program
- Quechan Forbearance Agreement
- 2007 Lower Colorado Water Supply Project
- San Luis Rey Exchange
- 2020 Bard Seasonal Fallowing Program
- 2022 Quechan Seasonal Fallowing Program

Storage and Other Programs

- Intentionally Created Surplus
- Partnerships with Mexico
- Storing Water for IID

Over $2 Billion invested in these transfer and exchanges to date

2007 Interim Guidelines SEIS

Rules for Operation of Lake Powell & Lake Mead

Under the Boulder Canyon Project Act, the Secretary of the Interior is the River Master in the Lower Basin

2007 Interim Guidelines

- Defined coordinated operation of Lake Powell and Lake Mead
- Determined when Shortages would be taken in the Lower Division States (Arizona, California and Nevada)
- Established Intentionally Created Surplus storage in Lake Mead
- Effective 2007-2025

2007 Interim Guidelines Supplemental Environmental Impact Statement

The U.S. Bureau of Reclamation (Reclamation) announced that it will prepare a Supplemental Environmental Impact Statement (SEIS) that may result in changes to operations of Glen Canyon and Hoover Dams in 2023-24 to address impacts of low runoff conditions that pose unacceptable risks to operations of dams

Revisions may include:

- Reduced annual releases from Glen Canyon Dam
- Changes to shortages and decrease in quantity of water for Arizona, Nevada and California

May 2022
- Interior Department announces immediate actions to protect Lake Powell which include reducing 480,000 acre-feet of releases to Lake Mead in 2022

June 2022
- Bureau of Reclamation Commissioner calls on the Colorado River Basin States to reach agreement on how conserve or add 2-4 million acre-feet (MAF) by August

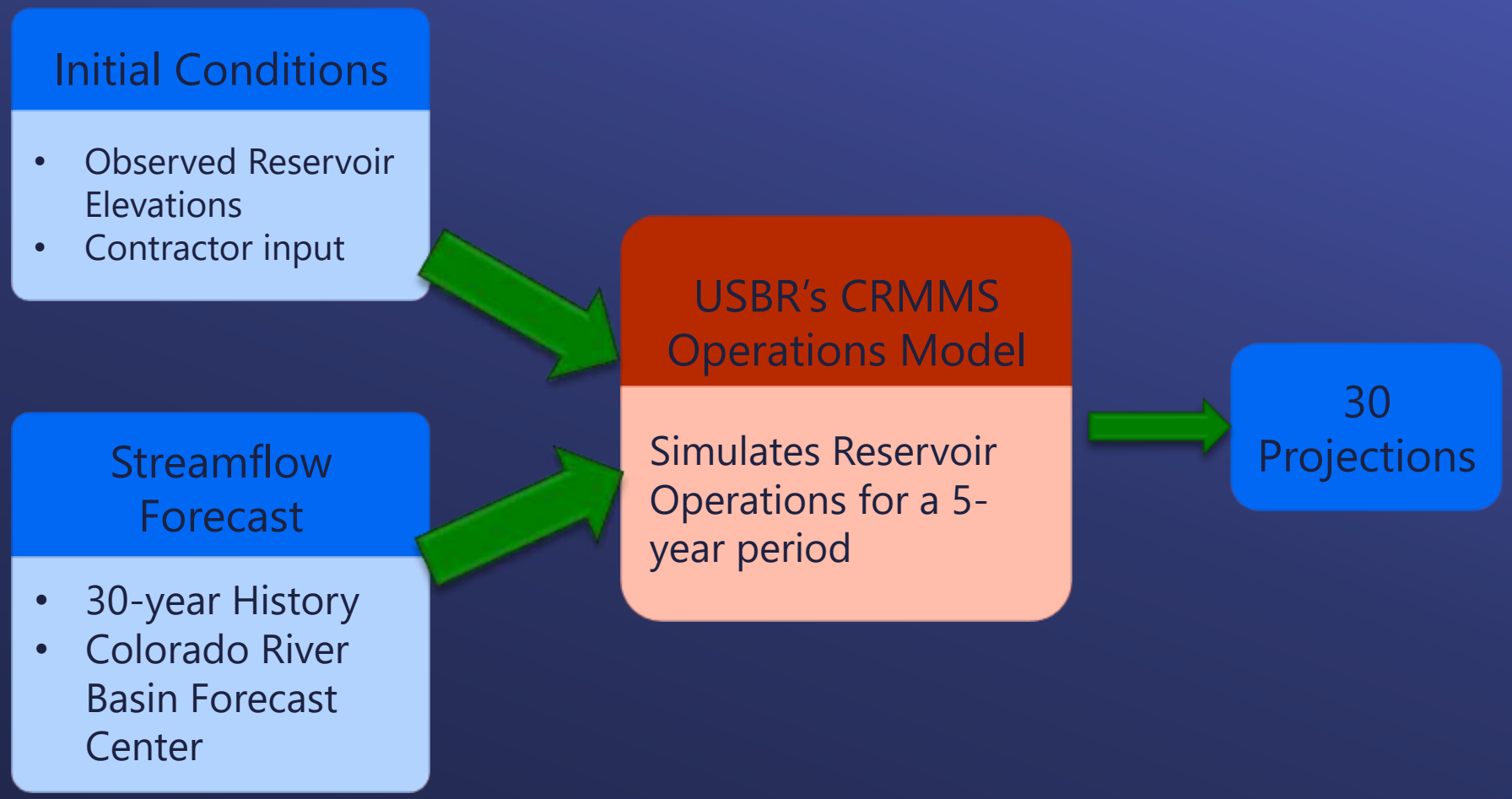
August 2022
- After a summer of discussion, the Colorado River Basin States do not reach agreement on the call for 2-4 MAF

October 2022
- Colorado River Contractors in California propose to reduce use by up to 400,000 acre-feet annually starting in 2023 through 2026

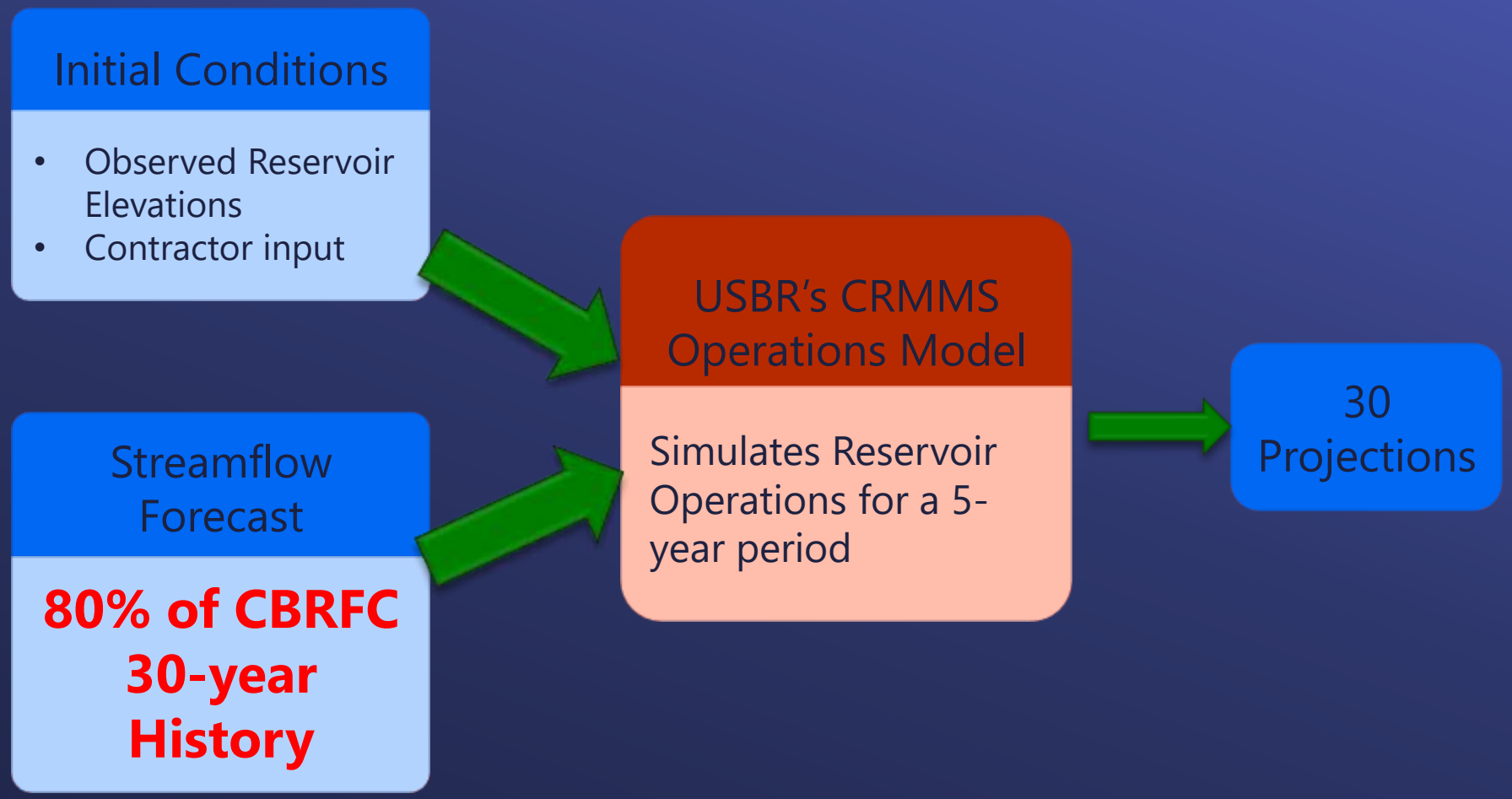
November 2022
- Reclamation publishes Notice of Intent to prepare an SEIS

January 2023
- Six States submit Consensus Based Management Alternative
- Colorado River Board of California submits alternative

USBR Typical Approach to Short Term Analysis



80% of 30-Year History as Climate Change Proxy

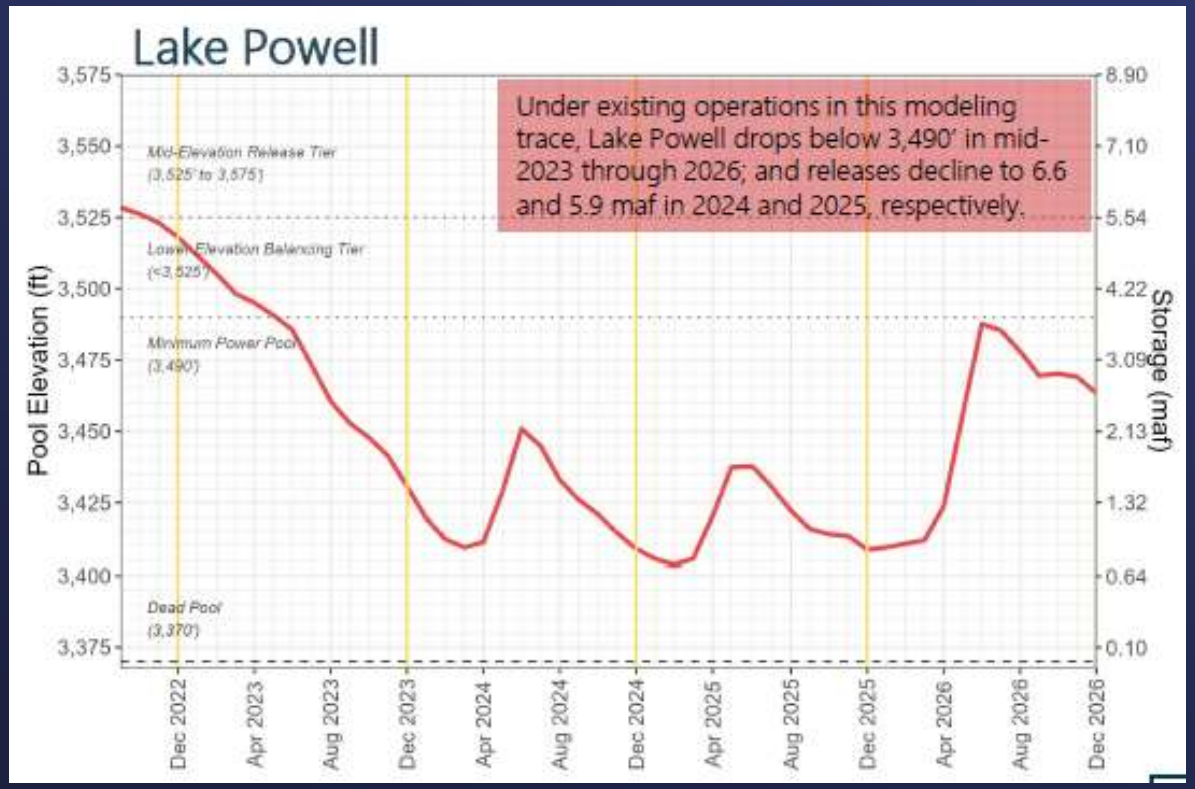


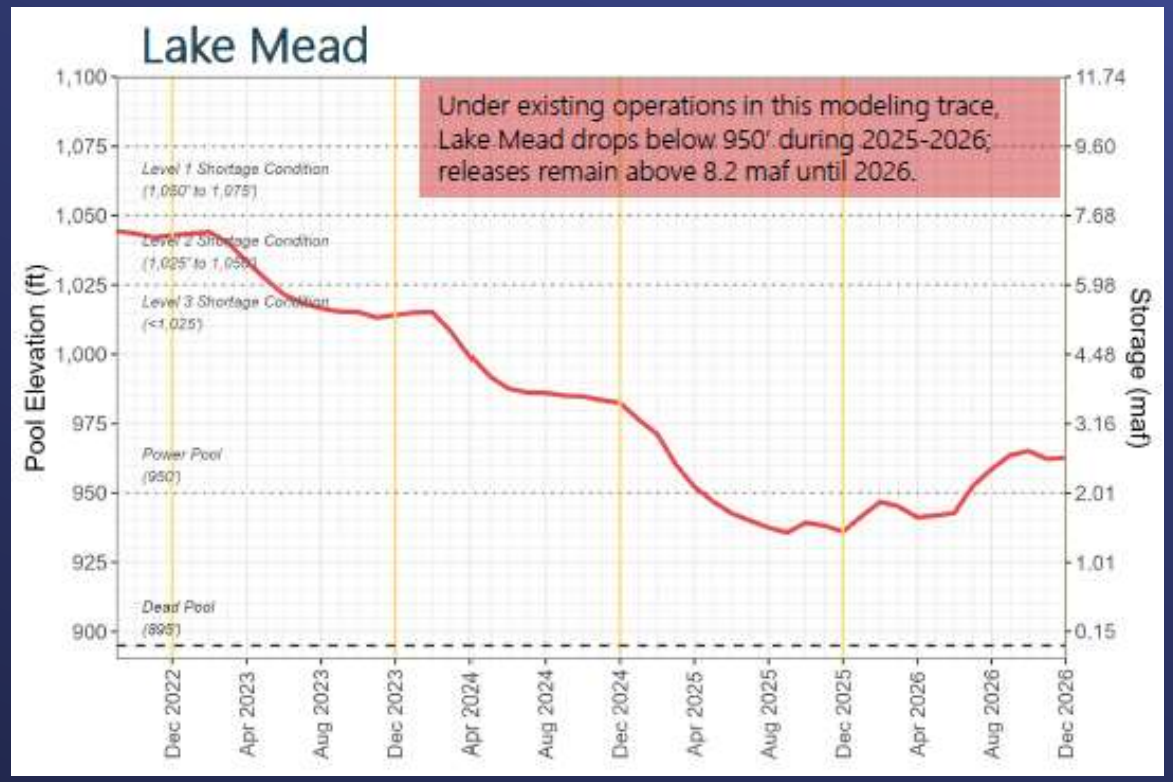
Developing a plan for protecting critical infrastructure via reservoir elevations under very low runoff conditions

Under 80% ESP Analysis, Lake Powell and Mead Fall below Minimum Power Pool

80% ESP Analysis – 2002-2005 Trace
Lowest Powell EOCY 2023 Storage in this 30-year period

End-of-Month (actual) Pool Elevation





Technical Evaluation of Short-Term Actions to Protect Critical Infrastructure

Initial Conditions

- Observed Reservoir Elevations
- Contractor input

Streamflow Forecast

80% of CBRFC 30-year History

USBR's CRMMS Operations Model

Model Adjustments Investigated:

- Shortage volumes
- Powell Release volumes
- Elevation Triggers

30 Projections Is Critical Infrastructure Protected?

Anticipated SEIS Alternatives to be Analyzed

Colorado River Board of California (CRB) Alternative

Voluntary contributions followed by shortages below Lake Mead elev. 1,025 based on Law of the River

Six States Alternative

Assesses system losses, triggers Shortages and DCP Contributions at higher elevations, and imposes further reductions below Lake Mead elev. 1,030

Reservoir Operations Alternative

Reclamation alternative to mitigate risks to Colorado River System reservoirs if consensus alternative isn't reached or is insufficient

No Action Alternative

Guidelines, 2019 Drought Contingency Plan and Existing Agreements

SEIS Process

Draft SEIS

- Summarize reasonable alternatives
- Identify preferred alternative or alternatives

Final SEIS

- Incorporate and respond to public comment
- Identify preferred alternative or alternatives

Record of Decision

- State Decision
- Provide analysis of environmental impacts

Colorado River Board of California (CRB) Submitted Alternative

On January 31, 2023, the CRB submitted an alternative for Reclamation to model

CRB's Alternative for Modeling

- Proposes short-term modifications to reservoir operations to protect infrastructure
- Asks that any modifications made to the operations of Lake Powell and Lake Mead as part of this process need to be consistent with applicable federal laws, interstate compacts, and decrees
- Seeks to:
  - Provide certainty to water contractors
  - Protect stored Intentionally Created Surplus (ICS)
  - Protect public health, safety, and welfare (as determined by each state) through the interim period

Colorado River Board of California (CRB) Submitted Alternative

CRB's Alternative for Modeling

Water demands within the states affected by a shortage declaration will be managed pursuant to:

- The 1968 Colorado River Basin Project Act and;
- US Supreme Consolidate Decree in *Arizona v. California*

Without a Seven States consensus, the default is the Law of the River

Recent California Actions & Proposals
Reducing California's Use of Colorado River Water

350,000 AF

In 2019, California agreed to participate in the Drought Contingency Plan (DCP), committing to make up to 350,000 acre-feet of DCP contributions annually

+

400,000 AF

California's Colorado River Contractors proposed conserving up to an additional 400,000 acre-feet starting in 2023 and continuing through 2026

=

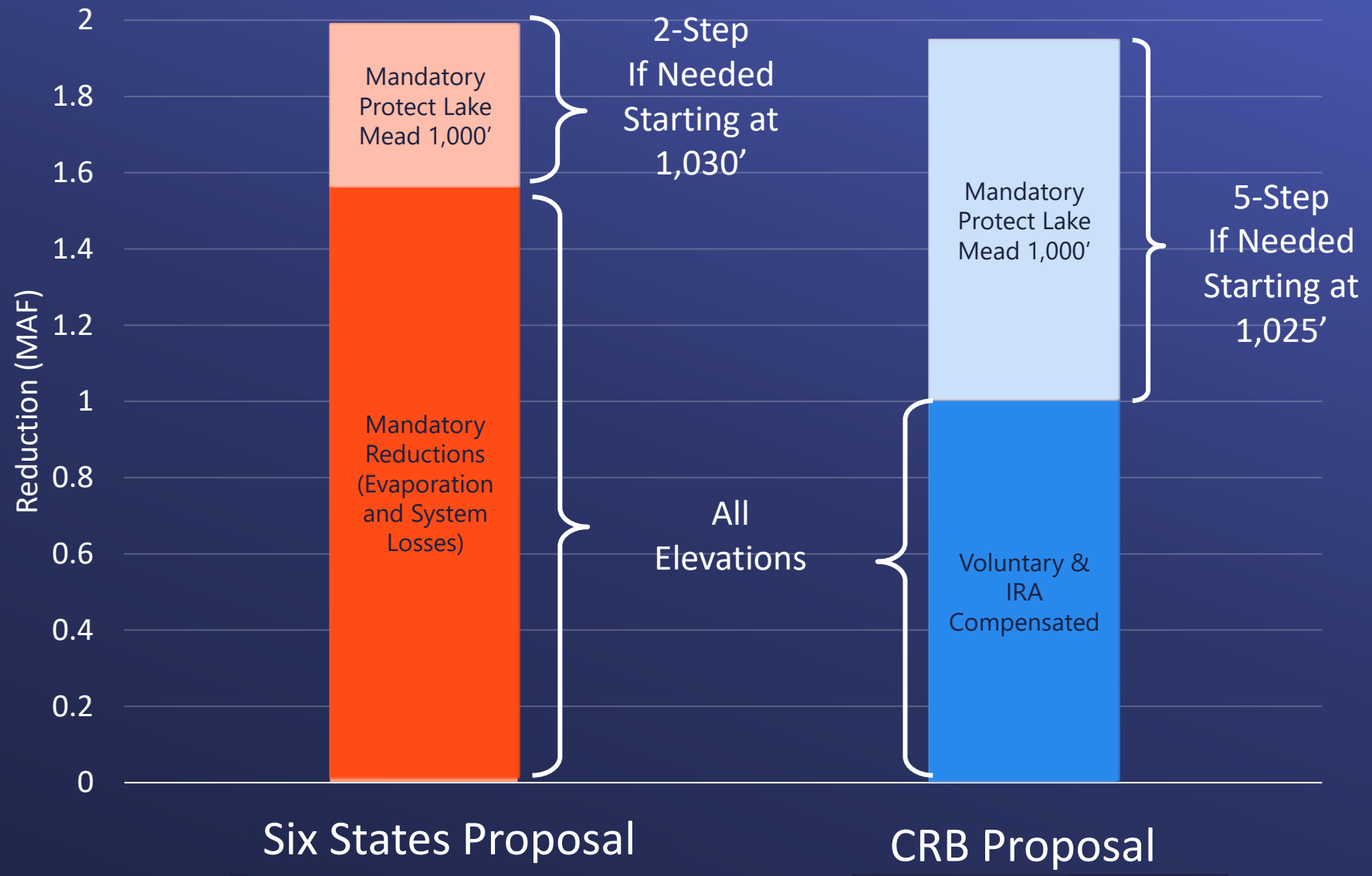
750,000 AF

California could voluntarily reduce its use of Colorado River water by up to 750,000 acre-feet annually — *even though California is not required to take shortages under the 2007 Interim Guidelines*

2007 Interim Guidelines SEIS

Lower Basin Comparison of Six States and CRB Proposals

Reduction above existing Shortages and DCP Contributions



Median Hydrology **Builds** Elevation

Median Hydrology **Maintains** Elevation

Operations Lake Mead and Lower Basin

2007 Interim Guidelines SEIS

Six States Alternative

Arizona, Nevada, Wyoming, Utah, New Mexico and Colorado jointly submitted the Consensus Based Management Alternative (CBMA)

- Assesses 1.54 MAF of annual reductions called Infrastructure Protection Volumes, *reducing the volume of water available in normal years from 7.5 MAF to 6 MAF*
- Raises the elevation in Lake Mead when maximum Shortages and DCP Contributions are required
- Imposes additional shortages on Lower Basin Contractors below Lake Mead elevation 1,030 feet

2007 Interim Guidelines SEIS

Six States Alternative

The Six States transmittal letter identified actions that should be pursued in parallel with the operational changes in the SEIS

Actions in Addition to SEIS

- Describes Upper Division State actions
  - Drought Response Operation Agreement (DROA) planning from zero to 500 TAF
  - Voluntary reductions in consumptive use
- Seeks inclusion of Mexico
- Beneficial use definitions and determinations under 43 CFR Part 417

2007 Interim Guidelines SEIS

Six States Alternative

Some transfer and exchange agreements include shortage sharing provisions and obligations between California water providers that could be affected by the SEIS in ways that cause disproportionate and unintended consequences on these California water providers.

Impacts on California

- Requires mandatory reductions without providing tools to help reduce water use
- Reductions to California's higher priority users could impact our region's water transfer programs
- Imposes cuts to California equivalent to 3.5 million households or 10 million Southern Californians

2007 Interim Guidelines SEIS

Inflation Reduction Act (IRA) Funding

IRA funding will help facilitate voluntary reductions in Colorado River water

Funding for Voluntary Contributions

Reclamation is phasing funding projects

- Phase lA firm, fixed price for short-term projects
- Phase lB short-term projects that seek funding above the firm, fixed price

Phase l applications were due in November and decisions are expected soon

- Phase 2 will be for longer term system efficiency project

Deadlines for Phase 2 will be announced

SEIS and Post-2026 Operations are Separate Processes

SEIS Process

January 2023
Develop SEIS Alternative

Spring 2023
Draft SEIS for Public Comment

Summer 2023
Final SEIS and Record of Decision (ROD & Board Authorizations

2024
Implement new ROD

Post 2026 Operations Process

September 2022 Pre-scoping Comments

Early 2023 Notice of Intent to Prepare EIS

Next Steps

- Colorado River Basin State representatives will continue to meet
- Colorado River Contractors in California and CRB will work together throughout the SEIS process
- Reclamation will issue a Draft SEIS in the Spring that identifies the preferred alternative or alternatives, receive public comment, and publish a Final SEIS and Record of Decision in the Summer. The Record of Decision would be implemented starting in 2024.
- Staff will participate in both intrastate and interstate discussions throughout the process
- Staff will provide regular updates and receive direction from the Ad Hoc Committee
- Staff will provide updates to the Board and receive direction throughout the process

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA