

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
J. Garza, Vice Chair
M. Camacho
G. Cordero
L. D. Dick
C. Kurtz
T. McCoy
C. Miller
G. Peterson
M. Ramos
H. Repenning
K. Seckel

Legal and Claims Committee - Final - Revised 1

Meeting with Board of Directors *

September 12, 2023

8:30 a.m.

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: 873 4767 0235. Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via in-person or teleconference. To participate via teleconference 1-833-548-0276 and enter meeting ID: 876 9484 9772 or click <https://us06web.zoom.us/j/87694849772?pwd=V3dGZGRYUjJ3allqdUxXTIJRM044Zz09>

**Tuesday, September 12,
2023**

**08:30 a.m. LC
10:30 a.m. FAIRP
12:30 p.m. Break
01:00 p.m. BOD
03:00 p.m. LRAC**

MWD Headquarters Building • 700 N. Alameda Street • Los Angeles, CA 90012

Teleconference Locations:

525 Via La Selva • Redondo Beach, CA 90277

Cedars Sinai Medical Center • 8700 Beverly Blvd • Los Angeles, CA 90048

3008 W. 82nd Place • Inglewood, CA 90305

504 Pier Avenue • Santa Monica, CA 90405

* 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

[21-2364](#)

Attachments: [09122023 LC 2A Report](#)

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

3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Legal and Claims Committee for July 10, 2023 (Copies have been submitted to each Director, any additions, corrections, or omissions) [21-2365](#)

Attachments: [09122023 LC 3A \(07102023\) Minutes](#)

4. CONSENT CALENDAR ITEMS - ACTION

NONE

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

5. OTHER BOARD ITEMS - ACTION

- 8-5** 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 filing cross-complaints; 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 \$2,500,000; authorize an increase in the maximum amount payable under contract with Exponent, Inc., for consulting services by \$200,000 to an amount not-to-exceed \$600,000; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA. [Conference with legal counsel – existing litigation and initiation litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1) and 54956.9(d)(4)] [21-2600](#)

6. BOARD INFORMATION ITEMS

NONE

7. COMMITTEE ITEMS

- a. Report on Sierra Club et al. v. California Department of Water Resources, Sacramento County Superior Court Case No. 34-2020-80003517 (consolidated with California Department of Water Resources v. All Persons Interested in the Matter, etc., Sacramento County Superior Court Case No. 34-2020-00283112) [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]. [ADDED SUBJECT 9/5/23] **21-2663**

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. Committee agendas may be obtained on Metropolitan's Web site <https://mwdh2o.legistar.com/Calendar.aspx>. 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

Dane Crawford v. Metropolitan (Riverside County Superior Court)

On August 11, 2023, former employee Dane Crawford filed an employment lawsuit against Metropolitan in Riverside County Superior Court. Plaintiff served the lawsuit on Metropolitan on September 5. The complaint alleges six causes of action under the California Fair Employment and Housing Act (FEHA): race discrimination; race harassment; gender discrimination; gender harassment; retaliation; and failure to prevent harassment, discrimination, and retaliation. Plaintiff alleges that he was harassed and discriminated against based on his race and gender, Metropolitan approved and ratified this, he was retaliated against because of his complaints, and Metropolitan failed to prevent these

occurrences. Metropolitan’s answer or other responsive pleading is due on October 5, 2023.

Alicia Lorentzen v. Metropolitan (Los Angeles County Superior Court)

On August 11, 2023, employee Alicia Lorentzen filed an employment lawsuit against Metropolitan in Los Angeles County Superior Court. Plaintiff served the lawsuit on Metropolitan on September 5. The complaint alleges two causes of action under FEHA: retaliation and failure to prevent retaliation. Plaintiff alleges that she was retaliated against for opposing harassment and discrimination, and Metropolitan failed to prevent this retaliation. Metropolitan’s answer or other responsive pleading is due on October 5, 2023.

Matters Involving Metropolitan

Notice of Violation

Metropolitan was issued a Notice of Violation (NOV) by the City of Los Angeles on August 24, 2022, for alleged underground fuel storage tank violations associated with Metropolitan’s former Sunset Garage property.

General Counsel’s Office worked closely with the Metropolitan Safety and Regulatory Services

Section to get the NOV withdrawn and removed from Metropolitan’s record. The issues were the responsibility of, and were addressed by, the new owner of that facility, which was sold by Metropolitan several years ago. Metropolitan staff worked quickly to ensure environmental compliance and also to uphold Metropolitan’s environmental safety and stewardship record.

Matters Impacting Metropolitan

U.S. EPA and Army Corps Issue Final Rule Regarding Jurisdiction of Clean Water Act

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Army Corps) (collectively, “the Agencies”) issued a final rule amending the regulatory definition of “waters of the United States” (WOTUS) to conform to the Supreme Court’s definition in the *Sackett v. EPA* (Sackett II) case. The rule will be effective immediately when published in the Federal Register.

In January 2023, EPA and the Army Corps finalized a rule defining the scope of waters

protected under the Clean Water Act (CWA) (“the January 2023 rule”). The January 2023 rule intended to restore the pre-2015 definition of WOTUS and expanded federal jurisdiction over “non-traditional” waters and wetlands to smaller and more ephemeral waters connected or adjacent to traditional navigable waters. The January 2023 rule relied on the application of two standards: either the “relatively permanent” standard or the “significant nexus” standard, where the satisfaction of either would trigger federal jurisdiction.

As previously reported, on May 25, 2023, the U.S. Supreme Court narrowly interpreted the CWA’s scope of federal jurisdiction over wetlands in



Sackett II, holding that the CWA applies only to wetlands “with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right, so that they are ‘indistinguishable’ from those waters.”

The EPA and Army’s final rule amending the definition of WOTUS conforms the definition of WOTUS to the Sackett II decision and narrows the scope of federal authority. Specifically, the rule: (1) removes the “significant nexus” standard as a test to trigger federal jurisdiction; (2) clarifies that wetlands cannot be found to be jurisdictional based on the January 2023 rule’s definition of “adjacent,” since that conflicted with the Sackett II decision; and (3) removes the provision authorizing “interstate wetlands” to be subject to federal jurisdiction based simply on the fact they are interstate. Notably, the amendments to the January 2023 rule do not change the eight exclusions from the definition of WOTUS. EPA and the Army Corps will provide training and

develop regionally specific tools to facilitate implementation of the definition of WOTUS. The Agencies also are hosting a webinar to provide updates on the definition of WOTUS on September 12, 2023. Although the registration capacity is limited, the webinar will be recorded and posted on EPA’s website after the event.

The Agencies issued the final rule using “good cause” authority under the Administrative Procedure Act, which allows agencies to enact final rules without taking comment on a proposed version in limited cases, including where an agency has “good cause” to find that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.” Industry groups have already indicated they will challenge the final rule. Metropolitan staff will continue to track any future guidance and other actions by the Agencies affecting the definition of WOTUS, as well as any related litigation.

Matters Concluded and/or Terminated

Garren v. Eastern Municipal Water District (“Eastern”) (RIC2001152 County of Riverside)

Eastern v. Metropolitan/Garren v. Metropolitan (ADJ12390103 San Bernardino)

A Metropolitan employee filed a complaint against Eastern on March 5, 2020, seeking damages for alleged work-related injuries. Eastern filed a cross-complaint against Metropolitan on August 6, 2020, seeking reimbursement for these damages. After Metropolitan filed two demurrers, the cross-complaint was limited to an offset of any judgment against Eastern by the workers’ compensation

benefits paid by Metropolitan. Extensive discovery was conducted by plaintiff and Eastern on Metropolitan, including multiple sets of discovery, subpoenas, and numerous depositions. Metropolitan participated in a mediation on March 16, 2023 and a global settlement was reached in the civil lawsuit where Eastern settled with plaintiff and Metropolitan agreed to waive its lien and costs and Metropolitan agreed to pay \$75,000 in a Compromise and Release settlement for the workers’ compensation lawsuit. These settlements resolve both the civil lawsuit and the workers’ compensation lawsuit.

Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>
Action in which MWD is a party	2	Complaint for Damages: (1) Race Discrimination; (2) Race Harassment; (3) Gender Discrimination; (4) Gender Harassment; (5) Retaliation in Violation of California’s Fair Employment and Housing Act (“FEHA”); (6) Failure to Prevent Harassment, Discrimination and Retaliation, filed in Riverside County Superior Court, in the case <i>Dane Crawford v. MWD</i> , Case No. CVPS2304015 Verified Complaint for Damages: (1) Retaliation in Violation of FEHA; (2) Failure to Prevent Retaliation, filed in Los Angeles County Superior Court, in the case <i>Alicia Lorentzen v. MWD</i> , Case No. 23STCV19214



Government Code Claims	2	Claims relating to: (1) accident involving an MWD vehicle and (2) injuries from a fall due to a lifted sidewalk in the city of Hemet	
Requests Pursuant to the Public Records Act	10	<u>Requestor</u>	<u>Documents Requested</u>
		California Department of Industrial Relations, Labor Commissioner's Office, Public Works Unit	Notice of Completion and bid information for Chemical Vegetation Control for Diamond Valley Lake, Lake Skinner, and Lake Mathews facilities
		California Department of Transportation, Right of Way Utility Unit	Information on MWD's existing facilities near freeway project in Riverside County from north of Ramona Expressway to south of Martin Luther King Boulevard
		GHD	Winning proposal for Program Management Support Services for the Pure Water Southern California Program
		Golden Star Technology	Winning bid for Data Center Backup Upgrade Project
		Mesa Water District	Agreement between MWD and Antelope Valley-East Kern Water Agency regarding the High Desert Water Bank Program signed on December 9, 2019
		MWD Supervisors Association	Any documents that Chief DEI Officer Liji Thomas presented, shared, emailed with the MWD Board and at MWD Management Forums since 1/1/2022
		PBS Engineers	List of Prequalified Consultants for Categories 1 through 4 for the Request for Qualifications for Engineering Services for Water Treatment Facilities, Conveyance, Storage and Distribution Facilities, Large Rotating Equipment, and Power Distribution Facilities
		Private Citizen	Data on any open code violations on properties in Los Angeles County for the past 30 days
		Quantum Land and Energy	Original right-of-way document at San Bernardino Base and Meridian in Riverside County
		SmartProcure	Purchase order data including purchase order number, purchase order date, line item details, line item quantity, line item price, vendor information from May 24, 2023 to current



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 held May 15-18, 2023
- Supplemental briefing ordered on three issues with final brief due June 30, 2023
- [Tentative Decision/Proposed Statement of Decision against validity issued Aug. 25](#)
- [Objections due Sept. 14, 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



	<ul style="list-style-type: none"> • Cases ordered consolidated for all purposes • DWR’s motion for summary judgment granted; Sierra Club’s motion denied • Tentative Decision/Proposed Statement of Decision rejecting CEQA challenge issued Aug. 25, 2023 • Objections due Sept. 14, 2023
Subject	Status
<p>SWP-CVP 2019 BiOp Cases</p> <p><i>Pacific Coast Fed’n of Fishermen’s Ass’ns, et al. v. Raimondo, et al. (PCFFA)</i></p> <p><i>Calif. Natural Resources Agency, et al. v. Raimondo, et al. (CNRA)</i></p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Thurston)</p>	<ul style="list-style-type: none"> • SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases • Federal defendants reinitiated consultation on Oct 1, 2021 • February 24, 2023 court approved the 2023 Interim Operations Plan proposed by federal defendants and state plaintiffs, denied all alternative proposed operations and extended the stay until December 31, 2023
<p>CESA Incidental Take Permit Cases</p> <p>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</p> <p><i>Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA)</i></p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)</i></p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</i></p>	<ul style="list-style-type: none"> • 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 • SWC, et al. granted leave to intervene as respondents in <i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources</i> CEQA case • SWC’s renewed motion to augment the administrative records granted in part; a court-appointed referee will review withheld records to determine if the deliberative process privilege applies • Sept. 8, 2023 hearing on DWR’s and CDFW’s motion to modify the referral to exclude certain withheld records



<p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA)</p>	
<p>CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C091771 (20 Coordinated Cases)</p> <p>Validation Action <i>DWR v. All Persons Interested</i></p> <p>CEQA 17 cases</p> <p>CESA/Incidental Take Permit 2 cases</p> <p>(Judge Arguelles)</p>	<ul style="list-style-type: none"> • 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 • Sept. 15, 2023 re-hearing on fee motions
<p>COA Addendum/ No-Harm Agreement</p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Rockwell)</p>	<ul style="list-style-type: none"> • 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 last extended to Nov. 18, 2022
<p>Delta Plan Amendments and Program EIR 1 of 4 Consolidated Cases Sacramento County Superior Ct. remaining on appeal Court of Appeal for the Third App. Dist. Case No. C097948 <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> • <u>Aug. 30, 2023 North Coast Rivers Alliance filed a request to dismiss its appeal, ending the litigation</u>



<p>SWP Contract Extension Validation Action Court of Appeal for the Third App. Dist. Case No. C096316 <i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> • 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 completed May 30, 2023 • Oral argument set for September 20, 2023 • Appellants applied for continuance of oral argument and for more time (30 minutes per side)
<p>SWP Contract Extension CEQA Cases Court of Appeal for the Third App. Dist. Case Nos. C096384 & C096304 <i>North Coast Rivers Alliance, et al. v. DWR</i> <i>Planning & Conservation League, et al. v. DWR</i></p>	<ul style="list-style-type: none"> • 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



<p>Delta Conveyance Project Soil Exploration Cases</p> <p><i>Central Delta Water Agency, et al. v. DWR</i> Sacramento County Superior Ct. (Judge Chang)</p> <p><i>Central Delta Water Agency, et al. v. DWR (II)</i>, Sacramento County Super. Ct. (Judge Acquisto)</p>	<ul style="list-style-type: none"> • 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 <i>Department of Water Resources Cases</i>, 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 • March 27, 2023 court entered judgment and issued a writ after ordering and considering supplemental briefing • May 5, 2023 court granted DWR's motion to discharge the writ and dismiss the case • May 18, 2023 Notice of Appeal filed • Hearing on motion for attorneys' fees continued to September 4<u>November 17</u>, 2023
<p>Water Management Tools Contract Amendment</p> <p><i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Aquisto)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Aquisto)</p>	<ul style="list-style-type: none"> • Filed September 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA • 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



<i>San Diego County Water Authority v. Metropolitan, et al.</i>		
Cases	Date	Status
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.
	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.



Cases	Date	Status
2018 (cont.)	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.
	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.



Cases	Date	Status
2014, 2016, 2018 (cont.)	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.
	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.



Cases	Date	Status
2014, 2016, 2018 (cont.)	May 23, June 21	SDCWA filed motions in limine.
	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.
	March 14, 2023	Court issued tentative statement of decision (tentatively ruling in Metropolitan's favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan's favor)
March 14	Court issued amended order granting in part and denying in part SDCWA's motion for partial judgment (ruling that Metropolitan's claims	



		for declaratory relief regarding cost causation are not subject to court review).
	March 29	SDCWA filed objections to tentative statement of decision
	April 3	Metropolitan filed response to amended order granting in part and denying in part SDCWA's motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	April 25	Court issued statement of decision (ruling in Metropolitan's favor on all claims litigated at trial, except for those ruled to be moot based on the rulings in Metropolitan's favor)
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
Albright, Yee & Schmit, APC	Employment Matter	211923	05/23	\$60,000
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	\$1,277,187
	Delta Conveyance Project Bond Validation-CEQA Litigation	185899	09/21	\$250,000
	MWD Drone and Airspace Issues	193452	08/20	\$50,000
	Equal Employee Opportunity Commission Charge	200462	03/21	\$20,000
	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
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
	Grant Compliance Issues	211921	05/23	\$75,000
	Pure Water Southern California	207966	11/22	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$75,000
	General Real Estate Matters	180209	08/19	\$200,000
	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	\$100,000
Curls Bartling P.C.*	Bond Counsel	200470	07/21	N/A
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	\$615,422
Duncan, Weinberg, Genzer & Pembroke	Power Issues	6255	09/95	\$3,175,000
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
Hanna, Brophy, MacLean, McAleer & Jensen, LLP	Workers' Compensation	211926	06/23	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$500,000
	Tax Issues	180200	04/19	\$50,000
	Alternative Project Delivery (ADP)	207961	10/22	\$250,000
	Faith v. MWD	207963	10/22	\$100,000
Hausman & Sosa, LLP	MOU Hearing Officer Appeal	201892	09/21	\$95,000
	MOU Hearing Officer Appeal	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
Innovative Legal Services, P.C.	Employment Matter	211915	01/19/23	\$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	\$100,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance	137992	02/14	\$45,000
Jones Hall, A Professional Law Corp*	Bond Counsel	200465	07/21	N/A
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	\$250,000
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$50,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Kutak Rock LLP	Delta Islands Land Management	207959	10/22	\$10,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$229,724
	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, Agr. #146627: Per 5/2/22 Engagement Letter between Manatt and Raftelis, MWD paid Raftelis Financial Consultants, Inc.	Invoice No. 23949		\$56,376.64 for expert services & reimbursable 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
	PFAS Compliance Issues	207968	11/14/22	\$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	\$1,700,000
	Arvin-Edison v. Dow Chemical	203452	01/22	\$100,000
	Semitropic TCP Litigation	207954	09/22	\$75,000
Nixon Peabody LLP*	Bond Counsel [re-opened]	193473	07/21	\$100,000
	Special Finance Project	207960	10/22	\$50,000
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Olson Remcho LLP	Government Law	131968	07/14	\$400,000
	Executive Committee/Ad Hoc Committees Advice	207947	08/22	\$60,000
	Public Records Act	207950	08/22	\$45,000
	Advice/Assistance re Proposition 26/Election Issues	211922	05/23	\$100,000
Paul Hastings LLP	MWD v. California Department of Fish and Wildlife	207969	3/23	\$100,000
Rains Lucia Stern St. Phalle & Silver, PC	Employment Matter	211919	4/23	\$60,000
Renne Public Law Group, LLP	ACE v. MWD (PERB Case No. LA-CE-1574-M)	203466	05/22	\$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
	Oswalt v. MWD	211925	05/23	\$100,000
Seyfarth Shaw LLP	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
	Reese v. MWD	207952	11/22	\$400,000
	General Labor/Employment Advice	211917	3/23	\$100,000
	<u>Civil Rights Department Complaint</u>	<u>211931</u>	<u>07/23</u>	<u>\$100,000</u>
Sheppard Mullin Richter & Hampton	Rivers v. MWD	207946	07/22	\$250,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringer PC	Construction Contracts - General Conditions Update	185896	07/20	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Thompson Coburn LLP	NERC Energy Reliability Standards	193451	08/20	\$300,000
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
	Colorado River Issues	211924	05/23	\$100,000
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

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

July 10, 2023

Vice Chair Garza called the teleconference meeting to order at 10:46 a.m.

Members present: Vice Chair Garza, Directors Camacho, Dick, Kurtz, McCoy (teleconference posted location), Miller, Peterson, and Seckel.

Members absent: Chair Sutley, Directors Cordero, Ramos, and Repenning.

Other Directors present: Chairman Ortega, Directors Abdo, Alvarez, Armstrong, Bryant, De Jesus, Dennstedt, Faessel, Fellow, Fong-Sakai, Goldberg, Gray (teleconference posted location), Lefevre, McMillan, Morris, Pressman (teleconference posted location), and Smith.

Committee Staff present: Beatty, Hagekhalil, Miyashiro, Scully, and Wheeler.

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

None

2. MANAGEMENT REPORTS

- a. Subject: General Counsel’s report of monthly activities

General Counsel Scully stated she would give her report at Tuesday’s Board Meeting.

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

- A. Subject: Approval of the Minutes of the Legal and Claims Committee for May 9, 2023.

Director Camacho made a motion, seconded by Director Kurtz, to approve item 3A. The vote was:

Ayes: Directors Camacho, Dick, Garza, Kurtz, McCoy, Miller, Peterson, and Seckel.

Noes: None

Abstentions: None

Absent: Directors Cordero, Ramos, Repenning, and Sutley.

The motion for Item 3A passed by a vote of 8 ayes, 0 noes, 0 recusals, 0 abstention, and 4 absent.

4. CONSENT CALENDAR ITEMS – ACTION

None

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

8-2 Subject: Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call vote is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Presented by: General Counsel Marcia Scully

Motion: Approve amendment of the Metropolitan Water District Administrative Code to delete the requirement that matters may not be placed on consent if a roll call is required and increase the cost of items that may be placed on the Consent Calendar from \$2 million to \$10 million

The following Directors provided comments or asked questions:

1. Miller
2. Ortega

Staff responded to the Directors' questions and comments.

Director Peterson made a motion, seconded by Director Dick, to approve Item 8-4.

Director Miller made a substitute motion to modify Option 1 from \$10 million to \$5 million. Director Camacho seconded. Director Miller withdrew his substitute motion.

The vote was:

Ayes: Directors Camacho, Dick, Garza, Kurtz, McCoy, Miller, Peterson, and Seckel.

Noes: None

Abstentions: None

Absent: Directors Cordero, Ramos, Repenning, and Sutley

The motion for Item 8-2 passed by a vote of 8 ayes, 0 noes, 0 recusals, 0 abstention, and 4 absent

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

- a. Subject General Counsel's Business Plan for Fiscal Year 2023-2024
- Presented by: General Counsel Marcia Scully

The following Directors provided comments or asked questions:

1. Kurtz
2. Peterson
3. Ortega

Staff responded to the Directors' questions and comments.

- b. Subject Discussion of Department Head Performance and Goal Setting
[Public employees' performance evaluations – General Counsel; to
be heard in closed session pursuant to Gov. Code Section 54957]

In closed session, the committee discussed the item. No action was taken.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on August 15, 2023.

Meeting adjourned at 11:47 a.m.

Juan Garza
Vice Chair