

# 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**

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

## **Legal and Claims Committee - Final - Revised 1**

Meeting with Board of Directors \*

**November 14, 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: 862 4397 5848. 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: 815 2066 4276 or click <https://us06web.zoom.us/j/81520664276pwd=a1RTQWh6V3h3ckFhNmDsUWpKR1c2Zz09>

## **Tuesday, November 14, 2023 Meeting Schedule**

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

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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

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\* 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 ANNOUNCEMENTS AND HIGHLIGHTS**

A. General Counsel's report of monthly activities

[21-2414](#)

**Attachments:** [11142023 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 October 10, 2023 (Copies have been submitted to each Director, any additions, corrections, or omissions) [21-2800](#)

**Attachments:** [11142023 LC 3A \(10102023\) Minutes](#)

### 4. CONSENT CALENDAR ITEMS - ACTION

- 7-11 Approve amendments to the Metropolitan Water District Administrative Code to conform to current law, practices, and regulations; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-2744](#)

**Attachments:** [11142023 LC 7-11 B-L](#)  
[11142023 LC 7-11 Presentation](#)

- 7-12 Approve amendments to Metropolitan Water District Administrative Code sections 6431 and 6453 to increase the authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 and the General Auditor to obtain professional services to an amount not to exceed \$100,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-2743](#)

**Attachments:** [11142023 LC 7-12 B-L](#)  
[11142023 LC 7-12 Presentation](#)

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

### 5. OTHER BOARD ITEMS - ACTION

- 8-4 Receive report on litigation in In re: Aqueous Film-Forming Foams Products Liability Litigation, Master Docket No.: 2:18-mn-2873-RMG, consider options, and provide direction on action in response to proposed settlements in: (1) City of Camden, et al. v. 3M Company, Civil Action No.: 2:23-cv-03147-RMG; and (2) City of Camden, et al. v. E.I. DuPont De Nemours and Company (n/k/a EIDP, Inc.) et al., Civil Action No.: 2:23-cv-03230-RMG; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation; may be heard in closed session pursuant to Government Code Section 54956.9(d) (1)] [21-2773](#)

**Attachments:** [11142023 LC 8-4 Presentation](#)



- 8-5** Report on litigation in Systems Integrated, LLC v. Metropolitan Water District of Southern California, Los Angeles County Superior Court Case No. 21STCV18292; authorize an increase in maximum amount payable under contract for legal services with Internet Law Center, Ltd. in the amount of \$150,000 for a total amount not to exceed \$250,000; and authorize an increase in maximum amount payable under contract for legal services with Kronenberger Rosenfeld, LLP in the amount of \$150,000 for a total 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)]. [REVISED SUBJECT 11/8/2023] [21-2745](#)

## **6. BOARD INFORMATION ITEMS**

NONE

## **7. COMMITTEE ITEMS**

NONE

## **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.





## Matters Impacting Metropolitan

### New Employment Law Changes for 2024

The California Legislature passed a large slate of new employment laws that will become effective in 2024. Some of the highlights include a new cannabis law (passed in 2022) that will prohibit employers from discriminating against employees for off-site marijuana use. Also on the anti-discrimination front, Governor Newsom approved a law creating a presumption of employer retaliation if it takes adverse action against an employee within 90 days of the employee engaging in certain protected activities.

In the workplace violence realm, the Legislature passed a law requiring employers to develop workplace violence prevention plans. The law also imposes new recordkeeping obligations.

Regarding leaves of absence, the State will extend paid sick leave from three days (or 24 hours) to five days (or 40 hours) for employees.

Additionally, a new law will introduce protected leave for a reproductive loss, mandating up to five days of leave for events such as miscarriages or failed adoptions.

On the COVID-19 front, the 2020 workers' compensation presumption (of workplace transmission) terminates at the end of 2023, and the Labor Code provision requiring employers to notify employees of a COVID-19 exposure will also expire. Employers, however, will still be required under Cal-OSHA emergency regulations to notify employees and certain contractors of a workplace exposure.

## Matters Concluded and/or Terminated

### Minako America Corporation dba Minco Construction Contract Matter

In November 2021, Metropolitan's Board awarded a \$1,477,000 construction contract to Minako America Corporation dba Minco Construction (Minco) for the replacement of ozone power supply units at the Jensen plant. Following the construction contract award, staff received a notification from the State of California's Department of Industrial Relations that Minco Construction had been debarred effective September 27, 2021. Pursuant to the Labor Code and California Code of Regulations, Minco was

disqualified from working on public works projects for a period of one year and was therefore unable to work on the project. Metropolitan submitted a claim for payment of \$147,700 with Minco's surety under the terms of Minco's bidder's bond. Minco disputed the claim and said it would challenge any payment by the surety.

Following informal settlement discussions, in September 2023, Minco made a payment to Metropolitan in the amount of \$100,000. In exchange for this payment, Metropolitan withdrew its claim for payment by Minco's surety in connection with the bidder's bond.

## Matters Received

<u>Category</u>	<u>Received</u>	<u>Description</u>
Government Code Claims	3	Claims relating to (1) an accident involving an MWD vehicle, (2) damage to an employee's property from an electrical receptacle at Gene Camp, and (3) damage to a golf course from flooding caused by the release of water into a stream that dissects the golf course
Subpoenas	1	Workers' Compensation subpoena for employee's personnel, wage, and work schedule records





Requests Pursuant to the Public Records Act	6	<u>Requestor</u>	<u>Documents Requested</u>
		Laguna Bluebelt Coalition	Any permits authorizing MWD discharges to Aliso Creek in Orange County
		Laquer, Urban, Clifford & Hodge on behalf of Trustees of the Southern California IBEW-NECA Pension Trust	ACS Engineering, Inc.'s certified payroll records, payment bond issued in favor of the general contractor Blois Construction, Inc., and Notice of Completion relating to the Sepulveda, West Valley, and East Valley Feeders Upgrades Project
		Maximize Communication Group	Any maps of MWD substructures near project on California Oaks Road in Murrieta
		Phoenix Contracting	Data on past awards for 1.5 ton truck with 4-wheel drive and chassis with 132-inch body with crane
		Private Citizen (2 requests from same requester)	Proposals submitted in response to (1) Request for Qualifications for Professional Services Agreements for Engineering Services and (2) Request for Proposals for Program Management Services to Support the Pure Water Southern California Program



### 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 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
- DWR's objections filed September 18, 2023
- Opponents responses to objections filed September 28, 2023
- Court extended the deadline to issue a judgment to December 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





	<p>standalone CEQA lawsuit challenging DWR's adoption of the bond resolutions</p> <ul style="list-style-type: none"> <li>• Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project</li> <li>• Cases ordered consolidated for all purposes</li> <li>• DWR's motion for summary judgment granted; Sierra Club's motion denied</li> <li>• Tentative Decision/Proposed Statement of Decision rejecting CEQA challenge issued Aug. 25, 2023</li> <li>• DWR's objections filed September 18, 2023</li> <li>• Opponents responses to objections filed September 28, 2023</li> <li>• <a href="#">Court extended the deadline to issue a judgment to December 18, 2023</a></li> </ul>
Subject	Status
<p><b>SWP-CVP 2019 BiOp Cases</b></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"> <li>• SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> cases</li> <li>• Federal defendants reinitiated consultation on Oct 1, 2021</li> <li>• 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</li> <li>• <a href="#">Nov. 16, 2023 deadline for parties to file a joint status report</a></li> </ul>
<p><b>CESA Incidental Take Permit Cases</b></p> <p><b>Coordinated Case Name <i>CDWR Water Operations Cases</i>, JCCP 5117 (Coordination Trial Judge Gevercer)</b></p> <p><i>Metropolitan &amp; Mojave Water Agency v. Calif. Dept. of Fish &amp; Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors &amp; Kern County Water Agency v. Calif. Dept. of Fish &amp; 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>	<ul style="list-style-type: none"> <li>• All 8 cases ordered coordinated in Sacramento County Superior Court</li> <li>• Stay on discovery issued until coordination trial judge orders otherwise</li> <li>• All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases</li> <li>• Certified administrative records lodged March 4, 2022</li> <li>• 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</li> <li>• 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</li> </ul>





<p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA)</p>	<ul style="list-style-type: none"> <li>• 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</li> <li>• Sept. 8, 2023 hearing on DWR's and CDFW's motion to modify the referral to exclude certain withheld records</li> <li>• CDFW's motion denied, DWR's motion subject to the Court's in camera review of records proposed for exclusion</li> <li>• Referee's recommendation is to grant in part, deny in part SWC parties' motion to augment the administrative records</li> <li>• Oct. 13, 2023 objections or responses to Referee's recommendation due</li> <li>• <u>Oct. 27, 2023 court's ruling granting in part, and denying in part, the SWC parties' motion to augment DWR's and CDFW's administrative records became final</u></li> </ul>
<p><b>CDWR Environmental Impact Cases</b> <b>Sacramento Superior Ct. Case No. JCCP 4942,</b> <b>3d DCA Case No. C091771</b> <b>(20 Coordinated Cases)</b></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"> <li>• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit</li> <li>• January 10, 2020 – Nine motions for attorneys' fees and costs denied in their entirety</li> <li>• Parties have appealed attorneys' fees and costs rulings</li> <li>• May 11, 2022, court of appeal reversed the trial court's denial of attorney fees and costs in an unpublished opinion</li> <li>• Opinion ordered published</li> <li>• Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal's opinion</li> <li>• Sept. 15, 2023 re-hearing on fee motions</li> </ul>
<p><b>COA Addendum/ No-Harm Agreement</b></p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Rockwell)</p>	<ul style="list-style-type: none"> <li>• Plaintiffs allege violations of CEQA, Delta Reform Act &amp; public trust doctrine</li> <li>• USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019</li> <li>• Westlands Water District and North Delta Water Agency granted leave to intervene</li> <li>• Metropolitan &amp; SWC monitoring</li> <li>• Deadline to prepare administrative record last extended to Nov. 18, 2022</li> </ul>





<p><b>SWP Contract Extension Validation Action</b> Court of Appeal for the Third App. Dist. Case No. C096316</p> <p><i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"><li>• DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful</li><li>• Metropolitan and 7 other SWCs filed answers in support of validity to become parties</li><li>• Jan. 5-7, 2022 Hearing on the merits held with CEQA cases, below</li><li>• Final statement of decision in DWR's favor filed March 9, 2022</li><li>• Final judgment entered and served</li><li>• C-WIN et al., County of San Joaquin et al. and North Coast Rivers Alliance et al. filed notices of appeal</li><li>• Validation and CEQA cases consolidated on appeal</li><li>• Briefing completed May 30, 2023</li><li>• Oral argument recalendared for November 15, 2023; 30 minutes per side</li></ul>
<p><b>SWP Contract Extension CEQA Cases</b> Court of Appeal for the Third App. Dist. Case Nos. C096384 &amp; C096304</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> <i>Planning &amp; Conservation League, et al. v. DWR</i></p>	<ul style="list-style-type: none"><li>• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 &amp; 10, 2019</li><li>• Deemed related to DWR's Contract Extension Validation Action and assigned to Judge Culhane</li><li>• Administrative Record completed</li><li>• DWR filed its answers on September 28, 2020</li><li>• Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases</li><li>• Final statement of decision in DWR's favor denying the writs of mandate filed March 9, 2022</li><li>• Final judgments entered and served</li><li>• North Coast Rivers Alliance et al. and PCL et al. filed notices of appeal</li><li>• Appeals consolidated with the validation action above</li></ul>





<p><b>Delta Conveyance Project Soil Exploration Cases</b></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"> <li>• Original case filed August 10, 2020; new case challenging the second addendum to the CEQA document filed Aug. 1, 2022</li> <li>• Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta</li> <li>• 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</li> <li>• 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</li> <li>• 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</li> <li>• Hearing on the merits held Oct.13, 2022</li> <li>• Dec. 2, 2022 ruling on the merits granting the petition with respect to two mitigation measures and denying on all other grounds</li> <li>• 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</li> <li>• March 27, 2023 court entered judgment and issued a writ after ordering and considering supplemental briefing</li> <li>• May 5, 2023 court granted DWR's motion to discharge the writ and dismiss the case</li> <li>• May 18, 2023 Notice of Appeal filed</li> <li>• Hearing on motion for attorneys' fees continued to February 29, 2024</li> </ul>
<p><b>Water Management Tools Contract Amendment</b></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"> <li>• Filed September 28, 2020</li> <li>• CWIN and Aqualliance allege one cause of action for violation of CEQA</li> <li>• NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief</li> <li>• SWC motion to intervene in both cases granted</li> <li>• Dec. 20, 2022 DWR filed notice of certification of the administrative record and filed answers in both cases</li> </ul>





<b><i>San Diego County Water Authority v. Metropolitan, et al.</i></b>		
<b>Cases</b>	<b>Date</b>	<b>Status</b>
<b>2014, 2016</b>	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.
<b>2017</b>	July 23, 2020	Dismissal without prejudice entered.
<b>2018</b>	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
<b>2018 (cont.)</b>	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.
<b>2014, 2016, 2018</b>	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
<b>2014, 2016, 2018 (cont.)</b>	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
<b>2014, 2016, 2018 (cont.)</b>	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)
<b>All Cases</b>	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
	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	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
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
<del>Brown White &amp; Osborn LLP</del>	<del>HR Matter</del>	<del>203450</del>	<del>03/22</del>	<del>\$50,000</del>
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	\$50,000





Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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
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
Hemming Morse, LLP	Baker Electric v. MWD	211933	08/23	\$100,000
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
<del>Kegel, Tobin &amp; Truce</del>	<del>Workers' Compensation</del>	<del>180206</del>	<del>06/19</del>	<del>\$250,000</del>
Kronenberger Rosenfeld, LLP	Systems Integrated, LLC v. MWD	211920	04/23	\$100,000





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
Marten Law LLP	PFAS Multi-District Litigation	216034	09/23	\$100,000
Martenson, Hasbrouck & Simon LLP	Employment Matter	211932	08/23	\$50,000
Meyers Nave Riback Silver & Wilson	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	<del>\$1,700,000</del> <u>\$2,500,000</u>
	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
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
	Reese v. MWD	207952	11/22	\$400,000
	General Labor/Employment Advice	211917	3/23	\$100,000
	Civil Rights Department Complaint	211931	07/23	\$100,000
	<u>Crawford v. MWD</u>	<u>216035</u>	<u>09/23</u>	<u>\$100,000</u>
Sheppard Mullin Richter & Hampton	Rivers v. MWD	207946	07/22	\$250,000
	<u>Lorentzen v. MWD</u>	<u>216036</u>	<u>09/23</u>	<u>\$100,000</u>
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringher 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

\*Expenditures paid by Bond Proceeds/Finance

\*\*Expenditures paid by another group



# **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

## **MINUTES**

### **LEGAL AND CLAIMS COMMITTEE**

**October 10, 2023**

Chair Luna called the teleconference meeting to order at 8:33 a.m.

Members present: Directors Camacho (entered after roll call), Cordero (entered after roll call), Dick, Douglas, Kurtz (entered after roll call, AB 2449), Luna, McCoy (entered after roll call), Miller, Peterson, and Seckel.

Members absent: Directors Garza, Ramos, and Sutley.

Other Directors present: Directors Abdo (teleconference posted location), Ackerman, Bryant, De Jesus, Dennstedt, Erdman, Faessel, Fong-Sakai (AB 2449), Goldberg, Gray (teleconference posted location), Lefevre (teleconference posted location), McMillan, Morris, Ortega, and Smith.

Director Kurtz indicated she is participating under AB 2449 “just cause” due to illness.  
Director Kurtz appeared by audio and on camera.

Director Fong-Sakai indicated she is participating under AB 2449 “just cause” due to illness.  
Director Fong-Sakai appeared by audio and on camera.

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

#### **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 referred to her monthly report regarding Legal Department staff, Juan Redin and Patty Quilizapa. She also reported on the Oroville Dam litigation and the multiple lawsuits related to the underlying incident.

Director Kurtz entered the meeting.



### **CONSENT CALENDAR ITEMS – ACTION**

#### **3. CONSENT CALENDAR OTHER ITEMS – ACTION**

- A.**            Subject:            Approval of the Minutes of the Legal and Claims Committee for September 12, 2023.

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

Ayes:            Directors Dick, Douglas, Kurtz, Luna, Miller, Peterson, and Seckel  
Noes:            None  
Abstentions:    None  
Absent:           Directors Camacho, Cordero, Garza, McCoy, Ramos, and Sutley.  
The motion for Item 3A passed by a vote of 7 ayes, 0 noes, 0 recusals, 0 abstention, and 6 absent.

Director Kurtz announced during roll call that no one was in the room with her 18 years of age or older.

Director McCoy entered the meeting.

#### **4. CONSENT CALENDAR ITEMS – ACTION**

None

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

Director Camacho entered the meeting.



## 5. OTHER BOARD ITEMS – ACTION

- 8-1**            Subject:            Report on legal claims alleging equal employment opportunity violations; and authorize an increase in the maximum amount payable under two contracts for legal services with Seyfarth Shaw LLP as follows: Agreement No. 201897 by \$150,000 to an amount not to exceed \$350,000, and Agreement No. 203454 by \$50,000 to an amount not to exceed \$210,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. [Conference with legal counsel – anticipated litigation; based on existing facts and circumstances of receipt of two legal claims threatening litigation, there is significant exposure to litigation against Metropolitan: two potential cases; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(2)]
- Presented by:    Assistant General Counsel Henry Torres presented the item in closed session.
- Motion:            Authorize an increase in the maximum amount payable under two contracts for legal services with Seyfarth Shaw LLP as follows: Agreement No. 201897 by \$150,000 to an amount not to exceed \$350,000, and Agreement No. 203454 by \$50,000 to an amount not to exceed \$210,000.

Director Cordero entered the meeting.

In open session, Director Peterson made a motion, seconded by Director Camacho, to approve the contract increases.

The vote in open session was:

Ayes:               Directors Camacho, Cordero, Dick, Douglas, Kurtz, Luna, McCoy, Peterson, and Seckel.

Noes:               None

Abstentions:      None

Absent:             Directors Garza, Miller, Ramos, and Sutley.

The motion for Item 8-1 passed by a vote of 9 ayes, 0 noes, 0 recusals, 0 abstention, and 4 absent



- 8-2**            Subject:            Report on litigation in Darren A. Reese v. Metropolitan Water District of Southern California, Riverside County Superior Court Case No. CVPS2204312; and authorize increase in the maximum amount payable under a contract for legal services with Seyfarth Shaw LLP in the amount of \$350,000 for a total amount not to exceed \$750,000; 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)]
- Presented by:       Assistant General Counsel Heather Beatty and outside counsel, Jeff Wortman of Seyfarth Shaw, presented the item in closed session.
- Motion:                Authorize an increase in the maximum amount payable under contract for legal services with Seyfarth Shaw LLP in the *Reese v. Metropolitan* lawsuit in the amount of \$350,000 for a total amount not to exceed \$750,000

In open session, Director Peterson made a motion, seconded by Director Camacho, to approve the contract increases.

Director Kurtz announced during roll call that no one was in the room with her 18 years of age or older.

The vote in open session was:

Ayes:                Directors Camacho, Cordero, Douglas, Kurtz, Luna, McCoy, and Seckel.  
Noes:                None  
Abstentions:       Directors Dick and Peterson.  
Absent:              Directors Garza, Miller, Ramos, and Sutley.  
The motion for Item 8-2 passed by a vote of 7 ayes, 0 noes, 0 recusals, 2 abstentions, and 4 absent



**8-3**            Subject:            Receive report on litigation in In re: Aqueous Film-Forming Foams Products Liability Litigation, Master Docket No.: 2:18-mn-2873-RMG, and provide direction on response to proposed settlements in: (1) City of Camden, et al. v. 3M Company, Civil Action No.: 2:23-cv-03147-RMG; and (2) City of Camden, et al. v. E.I. DuPont De Nemours and Company (n/k/a EIDP, Inc.) et al., Civil Action No.: 2:23-cv-03230-RMG; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – existing litigation; may be heard in closed session pursuant to Government Code Section 54956.9(d)(1)]. [REVISED SUBJECT 10/6/23]

Presented by:        Senior Deputy General Counsel Jill Teraoka and outside counsel, Jeff Kray of Marten Law, presented the item in both open and closed sessions.

Board Chair Ortega recused himself on Item 8-3 because Honeywell is a source of income.

Director Erdman recused himself on Item 8-3 because he owns stock in Raytheon and 3M companies.

Director Dick recused himself on Item 8-3 because he owns stock in Bayer, 3M, and Corteva companies.

Director Miller recused himself on Item 8-3 because he owns stock in 3M company.

Chair Luna reported no action was taken in closed session.

## **6. BOARD INFORMATION ITEMS**

None

## **7. COMMITTEE ITEMS**

None

## **8. FOLLOW-UP ITEMS**

None

## **9. FUTURE AGENDA ITEMS**

None

Next meeting will be held on January 9, 2024.

Meeting adjourned at 10:40 a.m.

Miguel Luna  
Chair





● **Board of Directors**  
***Legal and Claims Committee***

11/14/2023 Board Meeting

7-11

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**Subject**

Approve amendments to the Metropolitan Water District Administrative Code to conform to current law, practices, and regulations; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

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**Executive Summary**

The proposed amendments to the Administrative Code will update the Code so that the Code conforms to current law, practices, and regulations.

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**Details**

This letter proposes amendments to Metropolitan's Administrative Code to conform the Code to current law, practices, and regulations. The proposed amendments are set forth in **Attachment 1**, with overstrikes reflecting deletions and underlining reflecting additions. **Attachment 2** sets forth the sections as they will appear in the Administrative Code if the changes are approved.

The Administrative Code is proposed to be amended as follows:

1. Amend Administrative Code sections 2108, 2121(b) and 2142 to delete the "mailing" of the Board meeting minutes, consent calendar and monthly staff reports to the Board, and replace it with "providing" because the current practice is to provide these documents in electronic form.
2. Amend Administrative Code section 2501 to delete the dissolved Agricultural and Industry Relations Special Committee and section 2502 to delete the dissolved Integrated Resources Plan Special Committee.
3. Amend Administrative Code sections 4304(b) and 4305(a) and (b) to delete obsolete references to the dissolved Finance and Insurance Committee and the Audit and Ethics Committee, as applicable, and replace them with the Finance, Audit, Insurance, and Real Property Committee.
4. Repeal Administrative Code section 4520, adopted on December 8, 2020, which allowed Member Agencies to defer payment obligations to Metropolitan during COVID-19. By its own terms, this section expired January 1, 2022.
5. Amend Administrative Code sections 6201, 6203, 6226, 6231, and 6246 as follows, regarding benefits paid to temporary employees, leave accrual and usage, and annual leave to conform to current law and practice:
  - a. Section 6201(b) is amended to clarify that leave benefits for temporary employees apply to unrepresented temporary employees, both full-time and part-time.
  - b. Section 6203 is amended to clarify that leave accrual and usage for employees rehired within twelve (12) months have their prior service hours and unpaid leave balances reinstated.
  - c. Section 6226 is amended to conform the annual leave hours accumulated to current practice, as follows:



- i. Section 6226(a) is amended to clarify the maximum number of allowable annual leave hours for unrepresented employees is 560.51 hours.
  - ii. Section 6226(c) is amended to add May 15 to November 15 as one of two annual leave paydown dates each year for employees with more than 400 hours of leave credit.
  - iii. Section 6226(e) is amended to clarify that employees who are hired within twelve (12) months (or are reinstated from a non-cause involuntary separation) shall continue to earn vacation hours at the rate of their total cumulative service hours.
  - iv. Section 6226(g) is amended to clarify that employees shall be paid out their unused annual leave at time of separation based on the regular hourly base pay.
- d. Section 6231(m)(3) is amended to add exempt time off, as recently negotiated with the bargaining units, to the leave ordering rule applicable when leave is taken for the birth or adoption of a child, to care for seriously ill family members, as specified, or for military family leave for eligible employees.
- e. Section 6246(a) is amended to conform to past and present practice entitling all members of the military with one or more year(s) service with Metropolitan to leave with pay for a period not to exceed thirty (30) days per fiscal year.
- 6. Amend Administrative Code sections 6416 and 6436(b) to have the General Auditor make required annual and quarterly reports to the Finance, Audit, Insurance, and Real Property Committee and likewise, have the Ethics Officer report to the Ethics, Organization and Personnel Committee instead of these department heads reporting to the dissolved Audit and Ethics Committee.
- 7. Amend Administrative Code section 6472 to delete an obsolete reference in the section title to the dissolved Audit and Ethics Committee and replace it with the Ethics, Organization and Personnel Committee.
- 8. Amend Administrative Code sections 7405(a) and (b), 7411(b), and 7412(e) with respect to the Ethics Officer's investigative duties in order to delete obsolete references to the dissolved Audit and Ethics Committee and replace it with the Ethics, Organization and Personnel Committee.

## Policy

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Metropolitan Water District Administrative Code Section 2451(g): Duties and Functions [Legal and Claims Committee]

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

## California Environmental Quality Act (CEQA)

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### CEQA determination for Option #1:

The proposed action is not subject to CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines).

### CEQA determination for Option #2:

None required



## Board Options

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### Option #1

Approve amendments to the Metropolitan Water District Administrative Code to conform to current law, practices, and regulations.

**Fiscal Impact:** None

**Business Analysis:** The Administrative Code will be amended to conform to current law, practices, and regulations.

### Option #2

Do not approve amendments to the Metropolitan Water District Administrative Code to conform to current law, practices, and regulations.


**Fiscal Impact:** None

**Business Analysis:** The Administrative Code will not be amended to conform to current law, practices, and regulations.

## Staff Recommendation

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### Option #1

  
\_\_\_\_\_  
Marcia L. Scully  
General Counsel

11/3/2023  
\_\_\_\_\_  
Date

**Attachment 1 – The Administrative Code of The Metropolitan Water District of Southern California excerpts (with changes marked)**

**Attachment 2 – The Administrative Code of The Metropolitan Water District of Southern California excerpts (clean copy)**

Ref# Ic12697911



**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 1****BOARD OF DIRECTORS****Article 1****MEETINGS****§ 2108. Minutes.**

Minutes of the Board meeting shall be prepared and ~~mailed~~provided to each director as soon as convenient after each meeting. Such minutes shall not include the text of ordinances and resolutions adopted, which shall be recorded in separate volumes by the Board Executive Secretary. Minutes of the Board and monthly reports filed therewith are to be sent to the city clerks and water departments of the member public agencies who have requests on file with the Board Executive Secretary for such material.

**Article 2****CONSENT CALENDAR****§ 2121. Consent Calendar.**

(a) Consent Calendar items shall be set forth in a separate section of the Board's agenda.

(b) Matters for the Consent Calendar shall be recommended by the Department Heads and shall be submitted to the Board Executive Secretary not less than seven working days prior to the meeting of the Board and, except as provided below, pertinent materials sufficient to enable a member to formulate an opinion on each Consent Calendar item shall be included with the agenda ~~mailed~~provided to directors. Such materials need not be included with the agenda as to matters which are to be considered in committee in closed session, but such materials shall be available at the meeting of the Board for distribution to directors who request them.

(c) Matters may not be placed on the Consent Calendar if a roll call vote is required; if a vote other than a simple majority is required; or if the amount involved is \$2,000,000 or more.

**Article 4****MISCELLANEOUS BOARD RULES****§ 2142. Monthly Staff Reports.**

The monthly departmental reports of the General Manager and General Counsel shall be ~~mailed~~provided in advance of the Board meeting to each director by the department organizing the report but they are not to be distributed at such meeting. These reports are to be orally summarized at the Board meeting mentioning only significant changes from previous reports.



## Chapter 5

### OTHER COMMITTEES: MISCELLANEOUS COMMITTEE MATTERS

#### Article 1

#### SPECIAL COMMITTEES

~~See-~~

~~2500.—General~~

~~2501.—Agriculture and Industry Relations Special Committee~~

~~2502.—Integrated Resources Plan Special Committee~~

#### § 2500. General.

Special committees may be created by the Board to undertake special assignments on behalf of the Board and shall report directly to the Board unless otherwise directed. A special committee shall continue in existence indefinitely. Unless otherwise specified, members of a special committee shall be appointed by the Chair of the Board and shall serve at the Chair's pleasure.

#### ~~§ 2501. Agriculture and Industry Relations Special Committee.~~

~~——(a) The Agriculture and Industry Relations Special Committee shall hold meetings as required to accomplish committee objectives.~~

~~——(b) Duties and Functions~~

~~The Agriculture and Industry Relations Special Committee shall work to:~~

- ~~(1) Expand Metropolitan's understanding of business and agriculture water issues;~~
- ~~(2) Identify opportunities for collaboration to advance the mutual interests of urban and agricultural water users; and~~
- ~~(3) Make recommendations to the Board on policies and programs that will strengthen relationships with agricultural and business communities and related customer groups.~~

#### ~~§ 2502. Integrated Resources Plan Special Committee.~~

~~(a) The Integrated Resources Plan Special Committee shall hold meetings as needed to accomplish the objectives of the committee.~~

~~(b) The Integrated Resources Plan Special Committee shall review, consider and make recommendations with regard to the Integrated Resources Planning Process, and options for updating the Integrated Resources Plan, including those recommended by the One Water (Conservation and Local Resources) Committee and the Water Planning and Stewardship Committee.~~

## Division IV

### WATER SERVICE POLICIES

#### Chapter 3

#### WATER TRANSACTIONS REVENUE

#### § 4304. Apportionment of Revenues and Setting of Water Rates.

(a) Not later than at its February meeting the General Manager shall present to the Finance, Audit, Insurance, and Real Property Committee of the Board:



(1) Determinations of the revenue requirements and cost of service analysis supporting the rates and charges required during the biennial period beginning the following July 1, as determined by the General Manager in accordance with current Board policies, and,

(2) Recommendations of rates including, but not limited to, the System Access Rate, Water Stewardship Rate, System Power Rate, Treatment Surcharge, and the Supply Rates for the various classes of water service to become effective each January 1 of the biennial period. These recommended rates shall be the General Manager's determination, made in accordance with current Board policies, of the rates necessary to produce substantially the revenues to be derived from water transactions, including, but not limited to, sales, exchanges, and wheeling, during the biennial period beginning the following July 1.

(b) Not later than at its February meeting, the General Manager shall also present to the Finance, Audit, Insurance, and Real Property Committee recommendations regarding the continuation of a water standby charge or the imposition of an availability of service charge (such as the readiness-to-serve charge and capacity charge), which shall be the General Manager's determination, made in accordance with current Board policies, of the charge necessary to produce substantially the revenues to be derived from fixed revenue sources, if any, exclusive of taxes, during the biennial period beginning the following July 1 which the Finance, ~~Audit, and~~ Insurance, and Real Property Committee has determined to be necessary.

#### **§ 4305. Setting of Charges to Raise Fixed Revenue.**

(a) Not later than at its regular May meeting each year, the Finance, ~~Audit, and~~ Insurance, and Real Property Committee shall make its final determination regarding the water standby charge or other fixed revenue charge, if any, for the fiscal year beginning the following July 1, and shall recommend such charge, if any, to the Board at its regular May meeting.

(b) Not later than at such May meeting, the Board shall consider and take action upon the recommendations, if any, of the Finance, ~~Audit, and~~ Insurance, and Real Property Committee regarding a fixed revenue source, exclusive of taxes, to become effective the following January 1 or for the fiscal year beginning the following July 1, as determined by the Board for each fixed revenue source.

### **Chapter 5**

#### **WATER SERVICE REGULATIONS – GENERAL**

Sec.

- 4500. Adoption of Regulations
- 4501. Obligation to Pay for Water Delivered
- 4502. Liability and Indemnification
- 4503. Suspension of Deliveries
- 4504. Rates of Flow
- 4505. Estimates of Water Requirements and Schedules of Deliveries
- 4506. Metering of Water
- 4507. Billing and Payment for Water Deliveries
- 4508. Additional Payment and Reporting in the Event of Delinquency in Payment for Water
- 4509. Water Restricted to Use Within the District
- 4510. Application of Regulations
- 4511. Notices
- 4512. Sales Subject to System and Water Availability



- 4513. Equal Opportunity Requirements
- [4514. Repealed]
- [4515. Repealed]
- [4516. Repealed]
- 4517. Cooperative Storage Program
- 4518. Emergency Storage Program
- 4519. Emergency Deliveries of Member Agency Water Supplies in Metropolitan's System
- [4520. Repealed] COVID-19 Member Agency Payment Deferment Program

**~~§ 4520~~ — ~~COVID-19 Member Agency Payment Deferment Program~~**

- ~~(a) The Treasurer of the District shall defer payment obligations of any amount due to Metropolitan on invoices subject to Section 4501 for water transactions occurring from January 1, 2021 to June 30, 2021, as approved by the General Manager pursuant to the criteria specified in this Section. Payment obligations and additional charges under Sections 4507 and 4508 shall apply to any payment obligation deferred pursuant to this Section.~~
- ~~(b) The General Manager shall approve an application for deferment of amounts due to Metropolitan by member agencies, in accordance with Subsection (c), so long as the member agency has met the following criteria:~~
  - ~~i. — The member agency has experienced an increased rate of delinquency in the payments from its customers to that agency, as a result of the COVID-19 pandemic;~~
  - ~~ii. — The member agency has suspended or deferred payment obligations of its customers to that agency, whether the obligations suspended or deferred consists of the total amount due or a partial amount due;~~
  - ~~iii. — The member agency does not have sufficient financial reserves that can be used to buffer the financial impacts of the increased delinquencies, suspension, or deferments in (i) and (ii);~~
  - ~~iv. — The member agency has not received sufficient federal or state financial assistance to absorb the financial impacts described in (i) and (ii); and~~
  - ~~v. — The member agency has submitted a letter to the General Manager certifying it meets the criteria in (i) through (iv) and permitting Metropolitan to audit the submission.~~
- ~~(c) The following terms shall apply to amounts deferred pursuant to an application approved by the General Manager under this Section:~~
  - ~~i. — The Treasurer of the District shall defer a percentage of the member agency's payment obligation equal to the member agency's delinquency rate for up to six Metropolitan invoices, but not to exceed **ten percent** (10%) of each monthly invoice;~~
  - ~~ii. — The member agency shall pay all amounts deferred under this Section no later than December 29, 2021; and~~
  - ~~iii. — Any deferred amount not paid by December 20, 2021, is subject to Section 4508 as of December 30, 2021.~~
- ~~(d) This Section does not apply to transactions governed by agreements containing payment terms and obligations separate from Sections 4501, 4507, and 4508.~~
- ~~(e) This Section shall be repealed effectively January 1, 2022, unless extended by the Board of Directors.~~

## Division VI

### PERSONNEL MATTERS

#### Chapter 2

### PERSONNEL REGULATIONS



### § 6201. Benefits Paid Temporary Employees.

(a) Temporary employees shall be entitled only to be paid an hourly rate determined in accordance with this Code.

(b) An eligible temporary employee shall be entitled to personal leave. A temporary ~~unrepresented~~ full-time employee employed by the District for more than 1,044 hours of current full-time service is eligible for forty-eight (48) hours of personal leave per calendar year. A temporary ~~unrepresented~~ part-time employee employed by the District for more than 1,044 hours of current service is eligible for twenty-four (24) hours of personal leave per calendar year. Personal leave must be used in the calendar year in which it is received. Personal leave shall not be carried over into the year following year in which it is received nor will it be paid upon separation from District employment. The District shall be responsible for scheduling personal leave periods of temporary employees in such a manner as to achieve the most efficient functioning of the District. The District shall determine whether or not a request for personal leave will be granted; however, an employee's timely request for personal leave shall only be denied for good and sufficient business reasons.

(c) Temporary employees shall not be entitled to any benefits or rights of any nature whatsoever provided for under this Code, except as provided by subsections (a) and (b) above and as specifically required by applicable law.

### § 6203. Leave Accrual and Usage.

Hours of service shall be recorded to the nearest half hour. Leave shall not be used before it is earned. Employees who separate service from Metropolitan and are rehired within twelve (12) months, and employees who are reinstated from a non-cause involuntary separation shall have their Metropolitan service hours and any unpaid leave balances reinstated upon rehire or reinstatement. Employees must be re-employed into a category of employment that is eligible to receive leave accrual for unpaid leave balances to be reinstated.

### § 6226. Annual Leave.

(a) Subject to any applicable memorandum of understanding, or employment agreement, employees shall accumulate annual leave with full pay at the following rates for each hour of total service:

Range of Hours From Through		Accumulation Factor For Each Hour Within Range	Approximate- <del>Vacation</del> Hours
1	8,352	.038625	80
8,353	18,792	.057472	120
18,793	20,880	.061610	128
20,881	22,968	.065288	136
22,969	25,056	.068966	144
25,057	27,144	.073104	152
27,145	39, <del>762</del> 672	.076782	160
39, <del>763</del> 673	41,760	.080453	168
41,761	43,848	.084291	176
43,849	45,936	.088123	184



45,937	48,024	.091954	192
48,025	Last hour of total service	.095785	200

Notwithstanding the above, the maximum accumulation for those unrepresented classifications eligible for annual leave listed in Section 6500, shall be 560.51 hours.

(b) Subject to the restrictions contained in subsection (d) and any applicable memorandum of understanding, annual leave usage will be authorized as it is earned up to the maximum permitted by subsection (a). The District shall be responsible for scheduling annual leave periods of employees in such a manner as to achieve the most efficient functioning of the District. The District shall determine whether or not a request for annual leave will be granted. However, an employee's timely request for annual leave shall only be denied for good and sufficient business reasons.

(c) Subject to any applicable memorandum of understanding, if on the last day of the payroll cycles that includes May 15 and November 15 of any year, the total of accumulated annual leave exceeds the limitation on accumulation applicable to the hours of total service, the excess accumulated annual leave may not be used but shall, as soon as practicable after the end of the twenty fourth pay period of the annual payroll cycle, be paid to the employee entitled thereto an employee has credit for more than four hundred (400) hours, the employee shall be paid for all hours in between four hundred (400) and the maximum set forth in section 6226(a) above. Such payment shall be paid at the employee's hourly pay rate in effect at the end of said twenty fourth pay period for the current pay period for one hundred percent (100%) of the excess accumulated hours of such annual leave.

(d) No vacation may be granted, or paid for, unless the employee has completed 1,044 hours current service, including military leave. No vacation may be extended past an employee's date of termination.

(e) Employees returning from leave for military service shall earn vacation at the rate appropriate to the total time of District employment plus military service. Employees who separate service from Metropolitan and are rehired within twelve (12) months, and employees who are reinstated from a non-cause involuntary separation shall continue to earn vacation at the rate of their total cumulative Metropolitan service hours.

(f) Notwithstanding any provision of this Section 6226 to the contrary, a Department Head may approve the accumulation of annual leave at a rate of .0574720 hours for each hour of service for the first through the fourth year of service and .076782 for each hour of service for the first through the thirteenth (13<sup>th</sup>) year of service for an employee recruited by that Department Head.

(g) Employees will be paid out their unused annual leave at the time of separation based on the regular hourly base pay. Employees on temporary promotion performing higher level duties in a temporary capacity, upon separation of service will be returned to their regular classification and unpaid leave will be paid at their regular hourly base pay.

#### **§ 6231. Family and Medical Leave.**

(a) The District will provide Family and Medical Leave for an employee as required by state and federal law.



(b) For purposes of this section, “employee” shall mean an employee who has at least one (1) year of service with the District and at least 1,250 hours active service during the one year period immediately preceding the commencement of the request for a Family and Medical Leave.

(c) For purposes of this section, per the U.S. Department of Labor definition at 29 USC Sec. 2611(7) and 29 CFR Sec. 825.122(c), “parent” shall mean a biological, adoptive, step or foster father or mother, or any other individual who stood in *loco parentis* to the employee when the employee was a son or daughter. This term does not include any “parents-in law.”

(d) For purposes of this section, “designated person” shall mean a person identified by the employee at the time the employee requests Leave with pay and may include any individual related by blood or whose association with the employee is the equivalent of a family relationship. An employee is limited to one (1) designated person per 12-month period for Family and Medical Leave purposes. (Government Code Sec. 12945.2(b)(2).)

(e) The following provisions set forth certain of the rights and obligations with respect to Family and Medical Leave. Rights and obligations which are not specifically set forth or defined below are contained in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (“FMLA”) and the California Fair Employment and Housing Commission regulations implementing the California Family Rights Act (“CFRA”)(Government Code Sec. 12945.2).

(f) Unless otherwise provided by this section, “Family and Medical Leave” and “Leave” shall mean leave pursuant to the FMLA and/or CFRA.

(g) An employee is entitled to a total of twelve (12 ) weeks of Leave during any 12-month period to care for a newborn child, due to the placement of an adopted or foster child, to care for a son or daughter, parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122(c).), spouse, state-registered domestic partner, grandparent, grandchild, sibling or designated person who has a serious health condition, or because of the employee’s own serious health condition that prevents the employee from performing any one or more of the essential functions of the employee’s position. The 12-month period for calculating Leave entitlement will be the 12-month period measured backward from the date an employee uses any Leave.

(h) An employee’s entitlement to Leave for the birth or placement of a child for adoption or foster care expires twelve (12) months after the birth or placement. Parents who are both employed by the District are each entitled up to twelve (12) weeks of Leave for the birth or adoption of a child or the replacement of a foster care child.

(i) Married employees or state-registered domestic partners, who are both employees of the District, and who have an active-duty service member in their family, shall be entitled to qualifying exigency Leave, to manage active duty-related family affairs, and to injured service member care Leave, consistent with FMLA. Refer to military Leave at subsection (r)(1) and (r)(2) of this Section 6231 regarding qualifying exigency Leave and injured service member care Leave.

(j) An employee shall provide at least thirty (30) calendar days written advance notice for foreseeable events. For events which are not foreseeable, the employee shall notify the District as soon as the employee learns of the need for the Leave. To be eligible for a Leave, the employee must follow the District’s usual and customary call-in procedures for reporting an absence as detailed in section 6241.

(k) An employee who takes a Leave for their own serious health condition is required to submit a Return to Work / Doctor’s Release prior to returning to work.



(l) When the Leave is due to the health condition of the employee, the employee shall utilize Leave in the following order:

(1) All sick leave;

(2) Forty (40) hours of annual leave. If annual leave is exhausted, the employee must choose to use other paid or unpaid leave to complete the forty (40) hours. For regular part-time and Recurrent employees, hours will be adjusted to their standard weekly hours;

(3) The employee has the option of using additional paid leave at full pay. If the employee chooses to use additional paid leave at full pay, it must be used in the following order:

- (i) The balance of the employee's annual leave;
- (ii) Other paid leave;

(4) If the employee elects to not use additional paid leave at full pay, then the employee shall utilize leave in the following order:

- (i) 75% disability;
- (ii) 50% disability;
- (iii) Annual leave;
- (iv) Other paid leave at the employee's option;
- (v) Unpaid leave;

(5) The exhaustion of the paid leave shall run concurrently with the Leave.

(m) When the Leave is taken for the birth of a child of the employee, for the placement of a child with the employee for adoption or foster care, or to care for the employee's spouse, state-registered domestic partner, son or daughter, parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122 (c).), grandparent, grandchild, sibling or designated person who has a serious health condition or a military family leave, the employee shall utilize Leave in the following order:

(1) Special leave;

(2) Optionally, to use a maximum of 240 hours of available sick leave;

(3) Optionally, to use annual, personal, compensatory time, exempt time off, or recurrent leave;

(4) Unpaid leave.

The exhaustion of the paid leave shall run concurrently with the Leave. For purposes of this section, leave taken to care for a "designated person" does not apply to military family Leave.

(n) If an employee takes sick leave or partial pay disability leave without requesting Family and Medical Leave, within five (5) days of the employee's return to work and advisement of the District concerning the purpose of the sick leave, the District shall make a determination as to whether the sick leave shall be considered Family and Medical Leave.

(o) The District shall maintain coverage under any group health plan for the duration of the Leave at the level and under conditions that would have been provided had the employee been working.



However, the District shall only maintain such group health plan coverage for such employee for up to twelve (12) weeks within a 12-month period commencing with the start of the Leave.

(p) An employee has the right to reinstatement to the same or a comparable position unless the employee is exempted from such right under the provisions of the FMLA or CFRA.

(q) Any leave taken by an employee under the California Fair Employment and Housing Act's provisions applicable to pregnancy-related disabilities cannot be counted against the 12-week limitation on Family and Medical Leaves authorized under CFRA.

(r) Military Family Leave:

The two types of military family Leave available are:

(1) Qualifying Exigency Leave. An employee is entitled to a total of twelve (12) weeks of Leave during any 12-month period to help manage the family affairs of a member who is their spouse, state-registered domestic partner, son, daughter or parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611 (7); 29 CFR Sec. 825.122(c).) who is on active duty or is being called to active duty status.

(2) Injured Service Member Care Leave. An employee is entitled to a total of twenty-six (26) weeks of Leave during any 12-month period to care for a covered service member with a serious injury or illness incurred in the line of duty or within five (5) years of the date the service member or veteran undergoes medical treatment, recuperation, treatment, or therapy including aggravation of existing or pre-existing injuries while in the line of duty while on active duty. Employees entitled to this Leave are the spouse, state-registered domestic partner, parent (as defined by U.S. Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122(c).), child or next of kin of the injured or ill service member.

Married employees and state-registered domestic partners who are both employees of the District may be subject to a combined twelve (12) weeks or twenty-six (26) weeks of Leave based on specified family and medical reasons pursuant to FMLA.

#### **§ 6246. Military Leave.**

(a) Every employee who is a member of the National Guard or Naval Militia, or a member of the reserve corps or force in the Federal military, naval or marine service, or in the State Guard, shall be entitled to military leave in accordance with the applicable provisions of the Military and Veterans Code of the State of California. Metropolitan will also comply with Title 38, Chapter 43 of the United State Code (Uniformed Services Employment and Reemployment Rights Act) ("USERRA"). The present law provides, in general, that a person having one (1) year or more of service with the District is entitled to military leave with pay for a period not exceeding thirty (30) calendar days per fiscal year. ~~Members of the State Guard are entitled to military leave without pay not to exceed fifteen (15) calendar days per fiscal year.~~ The military service time of a new employee who comes to the District directly from military service may be applied to the one-year employment requirement necessary to the granting of military leave.

(b) Veterans are entitled, in general, to reemployment if they serve not more than five (5) years in the military, although exceptions allowed by federal law may apply per USERRA. The period a service member has to make a request for reemployment or report back to work after military service is based on time spent on military duty.



(1) For service of less than thirty-one (31) days, the service member must return as the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period.

(2) For service of more than thirty (30) days but less than 181 days, the service member must submit certification of military service for reemployment within fourteen (14) days or release from service.

(3) For service of more than 180 days, certification of military service for reemployment must be submitted within ninety (90) days of completion of a service member's military service.

Metropolitan may request that an employee who is absent for a period of service of thirty-one (31) days or more provide document showing that their request for reemployment is timely, the employee has not exceeded the five-year service limitation, and the employee's separation from military service was other than disqualifying under federal law. Military documents may include Military Discharge Documents, DD-214, or Certification of Military Service record.

A reemployed employee may not be discharged without cause: (1) for one (1) year after the date of reemployment if the employee's period of military service was for 181 days or more; (2) For 180 days after the date of reemployment if the employee's period of military service was for thirty-one (31) to 180 days.

Cause for discharge may be based on conduct or the application of legitimate nondiscriminatory reasons. Employees who serve for thirty (30) or fewer days are not protected from discharge without cause. However, they are protected from discrimination because of military service or obligation.

(c) Employees on military leave do not lose their accumulated sick leave credits. The District will restore the veteran to employment as though no interruption of District service has occurred. The District will apply all general pay adjustments enacted by the Board to the old base salary as though the veteran had not been absent. The veteran need not be returned to the former position but will be given a position of status and pay equivalent to the former position. Although the veteran earns no leave while absent on military leave, neither does the veteran lose any leave balances while absent on military leave. Military service time is added to the length of District service for purpose of computing the rate at which a returning veteran will earn annual leave.

(d) If the employee returns to work within six (6) months of their active duty discharge date, and the release was not due to a dishonorable discharge, the employee may submit to CalPERS the Military Leave Service Credit application and documentation for review. CalPERS will determine if the military leave of absence service time will be added to the employee's CalPERS service credit, and if it will be at no cost to the employee, or if the employee will have an option to purchase the additional service credit.

(e) Military Spousal Leave. Every employee who has worked at least an average of twenty (20) hours a week in the last six (6) months and is married to a service member is entitled to ten (10) days leave when their spouse returns from active duty. Employees must notify the District of their intention to take this leave within two (2) business days of receiving official notice that the spouse will be on leave from military deployment, and inform their manager if they intend to use annual, personal or no-pay leave.

## Chapter 4



## OFFICERS

### Article 2

#### GENERAL MANAGER

##### § 6416. Annual Report to Executive Committee.

The General Manager shall annually submit to the Executive Committee a business plan containing the General Manager's key priorities for the coming year. The business plan shall be submitted in conjunction with similar plans by the General Auditor to the Finance, Audit, Insurance, and Real Property Committee, and the Ethics Officer to the ~~Audit and~~ Ethics, Organization and Personnel Committee and the General Counsel to the Legal and Claims Committee.

### Article 3

#### GENERAL COUNSEL

##### § 6436. Annual and Quarterly Reports to Legal and Claims Committee.

(a) The General Manager and General Counsel shall report quarterly to the Legal and Claims Committee the exercise of any power delegated to them by Sections 6433 and 6434. The General Counsel shall report quarterly to the Legal and Claims Committee the exercise of any power delegated to them by Section 6431.

(b) The General Counsel shall annually, in advance of the July Board meetings, submit to the Legal and Claims Committee a business plan containing the Legal Department's key priorities for the coming year for review and approval. The business plan shall be submitted in conjunction with similar plans by the General Manager to the Executive Committee and the General Auditor to the Finance, Audit, Insurance, and Real Property Committee, and the and Ethics Officer to the ~~Audit and~~ Ethics, Organization and Personnel Committee.

### Article 5

#### ETHICS OFFICER

Sec.

6470. Powers and Duties

6471. Authority to Obtain Professional Services

6472. Reports to ~~Audit and~~ Ethics, Organization and Personnel Committee

##### § 6472. Reports to ~~Audit and~~ Ethics, Organization and Personnel Committee.

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

(b) The Ethics Officer shall prepare quarterly reports to the Ethics, Organization and Personnel Committee on activities concerning agreements executed pursuant to the authority given to the Ethics



Officer in Section 6471, and bi-monthly reports related to pending investigations as specified in Section 6470.

## **Division VII**

### **GOVERNMENTAL ETHICS**

#### **Chapter 4**

#### **INVESTIGATION BY THE ETHICS OFFICER**

##### **Article 1**

##### **AUTHORITY TO INVESTIGATE AND JURISDICTION**

##### **§ 7405. Investigations of Directors, General Manager, General Counsel, General Auditor, or Ethics Officer.**

(a) The Ethics Officer shall retain an outside counsel or investigator to conduct any investigation of alleged violations of Metropolitan ethics rules by a Director, General Manager, General Counsel or General Auditor. The investigation shall be conducted in consultation with the Ethics Officer. The Ethics Officer shall, based on the results of the investigation, make the final determination as to whether a violation has occurred. Prior to retaining the outside counsel or investigator, the Ethics Officer shall notify the ~~Audit and~~ Ethics, Organization and Personnel Committee Chair, unless the Chair is the subject of the investigation, in which case the Vice Chair shall be notified.

(b) The Ethics Officer shall refer to the General Counsel any complaint of alleged violations of Metropolitan ethics rules by the Ethics Officer or any member of the Office staff. The General Counsel shall retain an outside counsel or investigator to conduct the investigation in consultation with the General Counsel. The General Counsel shall, based on the results of the investigation, make the final determination as to whether a violation has occurred. Prior to retaining the outside counsel or investigator, the General Counsel shall notify the ~~Audit and~~ Ethics, Organization and Personnel Committee Chair.

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

##### **Article 2**

##### **PROCEDURES FOR INVESTIGATIONS**

##### **§ 7411. Investigation Timeframe.**

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

(b) For good cause, an investigation may extend beyond 180 calendar days; provided, however, the Ethics Officer shall provide written notice to the subject of the investigation with an expected completion date. The Ethics Officer shall also notify the ~~Audit and~~ Ethics, Organization and Personnel



Committee Chair whenever an investigation extends beyond 180 calendar days and provide periodic updates on the status of the investigation thereafter.

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

**§ 7412. Confidentiality of Investigations.**

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

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

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

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

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

(1) The communications shall be for the purpose of feedback.

(2) The communications shall be confidential.

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

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



**Division II****PROCEDURES PERTAINING TO BOARD, COMMITTEES  
AND DIRECTORS****Chapter 1****BOARD OF DIRECTORS****Article 1****MEETINGS****§ 2108. Minutes.**

Minutes of the Board meeting shall be prepared and provided to each director as soon as convenient after each meeting. Such minutes shall not include the text of ordinances and resolutions adopted, which shall be recorded in separate volumes by the Board Executive Secretary. Minutes of the Board and monthly reports filed therewith are to be sent to the city clerks and water departments of the member public agencies who have requests on file with the Board Executive Secretary for such material.

**Article 2****CONSENT CALENDAR****§ 2121. Consent Calendar.**

(a) Consent Calendar items shall be set forth in a separate section of the Board's agenda.

(b) Matters for the Consent Calendar shall be recommended by the Department Heads and shall be submitted to the Board Executive Secretary not less than seven working days prior to the meeting of the Board and, except as provided below, pertinent materials sufficient to enable a member to formulate an opinion on each Consent Calendar item shall be included with the agenda provided to directors. Such materials need not be included with the agenda as to matters which are to be considered in committee in closed session, but such materials shall be available at the meeting of the Board for distribution to directors who request them.

(c) Matters may not be placed on the Consent Calendar if a roll call vote is required; if a vote other than a simple majority is required; or if the amount involved is \$2,000,000 or more.

**Article 4****MISCELLANEOUS BOARD RULES****§ 2142. Monthly Staff Reports.**

The monthly departmental reports of the General Manager and General Counsel shall be provided in advance of the Board meeting to each director by the department organizing the report but they are not to be distributed at such meeting. These reports are to be orally summarized at the Board meeting mentioning only significant changes from previous reports.



**Chapter 5****OTHER COMMITTEES: MISCELLANEOUS COMMITTEE MATTERS****Article 1****SPECIAL COMMITTEES****§ 2500. General.**

Special committees may be created by the Board to undertake special assignments on behalf of the Board and shall report directly to the Board unless otherwise directed. A special committee shall continue in existence indefinitely. Unless otherwise specified, members of a special committee shall be appointed by the Chair of the Board and shall serve at the Chair's pleasure.

**Division IV****WATER SERVICE POLICIES****Chapter 3****WATER TRANSACTIONS REVENUE****§ 4304. Apportionment of Revenues and Setting of Water Rates.**

(a) Not later than at its February meeting the General Manager shall present to the Finance, Audit, Insurance, and Real Property Committee of the Board:

(1) Determinations of the revenue requirements and cost of service analysis supporting the rates and charges required during the biennial period beginning the following July 1, as determined by the General Manager in accordance with current Board policies, and,

(2) Recommendations of rates including, but not limited to, the System Access Rate, Water Stewardship Rate, System Power Rate, Treatment Surcharge, and the Supply Rates for the various classes of water service to become effective each January 1 of the biennial period. These recommended rates shall be the General Manager's determination, made in accordance with current Board policies, of the rates necessary to produce substantially the revenues to be derived from water transactions, including, but not limited to, sales, exchanges, and wheeling, during the biennial period beginning the following July 1.

(b) Not later than at its February meeting, the General Manager shall also present to the Finance, Audit, Insurance, and Real Property Committee recommendations regarding the continuation of a water standby charge or the imposition of an availability of service charge (such as the readiness-to-serve charge and capacity charge), which shall be the General Manager's determination, made in accordance with current Board policies, of the charge necessary to produce substantially the revenues to be derived from fixed revenue sources, if any, exclusive of taxes, during the biennial period beginning the following July 1 which the Finance, Audit, Insurance, and Real Property Committee has determined to be necessary.

**§ 4305. Setting of Charges to Raise Fixed Revenue.**

(a) Not later than at its regular May meeting each year, the Finance, Audit, Insurance, and Real Property Committee shall make its final determination regarding the water standby charge or other fixed



revenue charge, if any, for the fiscal year beginning the following July 1, and shall recommend such charge, if any, to the Board at its regular May meeting.

(b) Not later than at such May meeting, the Board shall consider and take action upon the recommendations, if any, of the Finance, Audit,, Insurance, and Real Property Committee regarding a fixed revenue source, exclusive of taxes, to become effective the following January 1 or for the fiscal year beginning the following July 1, as determined by the Board for each fixed revenue source.

## **Chapter 5**

### **WATER SERVICE REGULATIONS – GENERAL**

Sec.

- 4500. Adoption of Regulations
- 4501. Obligation to Pay for Water Delivered
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- 4513. Equal Opportunity Requirements
- [4514. Repealed]
- [4515. Repealed]
- [4516. Repealed]
- 4517. Cooperative Storage Program
- 4518. Emergency Storage Program
- 4519. Emergency Deliveries of Member Agency Water Supplies in Metropolitan's System
- [4520. Repealed]

## **Division VI**

### **PERSONNEL MATTERS**

## **Chapter 2**

### **PERSONNEL REGULATIONS**

#### **§ 6201. Benefits Paid Temporary Employees.**

(a) Temporary employees shall be entitled only to be paid an hourly rate determined in accordance with this Code.

(b) An eligible temporary employee shall be entitled to personal leave. A temporary unrepresented full-time employee employed by the District for more than 1,044 hours of current full-time service is eligible for forty-eight (48) hours of personal leave per calendar year. A temporary unrepresented part-time employee employed by the District for more than 1,044 hours of current service



is eligible for twenty-four (24) hours of personal leave per calendar year. Personal leave must be used in the calendar year in which it is received. Personal leave shall not be carried over into the year following year in which it is received nor will it be paid upon separation from District employment. The District shall be responsible for scheduling personal leave periods of temporary employees in such a manner as to achieve the most efficient functioning of the District. The District shall determine whether or not a request for personal leave will be granted; however, an employee's timely request for personal leave shall only be denied for good and sufficient business reasons.

(c) Temporary employees shall not be entitled to any benefits or rights of any nature whatsoever provided for under this Code, except as provided by subsections (a) and (b) above and as specifically required by applicable law.

### **§ 6203. Leave Accrual and Usage.**

Hours of service shall be recorded to the nearest half hour. Leave shall not be used before it is earned. Employees who separate service from Metropolitan and are rehired within twelve (12) months, and employees who are reinstated from a non-cause involuntary separation shall have their Metropolitan service hours and any unpaid leave balances reinstated upon rehire or reinstatement. Employees must be re-employed into a category of employment that is eligible to receive leave accrual for unpaid leave balances to be reinstated.

### **§ 6226. Annual Leave.**

(a) Subject to any applicable memorandum of understanding, or employment agreement, employees shall accumulate annual leave with full pay at the following rates for each hour of total service:

Range of Hours From Through		Accumulation Factor For Each Hour Within Range	Approximate Vacation Hours
1	8,352	.038625	80
8,353	18,792	.057472	120
18,793	20,880	.061610	128
20,881	22,968	.065288	136
22,969	25,056	.068966	144
25,057	27,144	.073104	152
27,145	39,672	.076782	160
39,673	41,760	.080453	168
41,761	43,848	.084291	176
43,849	45,936	.088123	184
45,937	48,024	.091954	192
48,025	Last hour of total service	.095785	200

Notwithstanding the above, the maximum accumulation for those unrepresented classifications eligible for annual leave shall be 560.51 hours.

(b) Subject to the restrictions contained in subsection (d) and any applicable memorandum of understanding, annual leave usage will be authorized as it is earned up to the maximum permitted by subsection (a). The District shall be responsible for scheduling annual leave periods of employees in such a manner as to achieve the most efficient functioning of the District. The District shall determine whether



or not a request for annual leave will be granted. However, an employee's timely request for annual leave shall only be denied for good and sufficient business reasons.

(c) Subject to any applicable memorandum of understanding, if on the last day of the payroll cycles that include May 15 and November 15 of any year, an employee has credit for more than four hundred (400) hours, the employee shall be paid for all hours in between four hundred (400) and the maximum set forth in section 6226(a) above. Such payment shall be paid at the employee's hourly pay rate in effect for the current pay period for one hundred percent (100%) of the excess accumulated hours of such annual leave.

(d) No vacation may be granted, or paid for, unless the employee has completed 1,044 hours current service, including military leave. No vacation may be extended past an employee's date of termination.

(e) Employees returning from leave for military service shall earn vacation at the rate appropriate to the total time of District employment plus military service. Employees who separate service from Metropolitan and are rehired within twelve (12) months, and employees who are reinstated from a non-cause involuntary separation shall continue to earn vacation at the rate of their total cumulative Metropolitan service hours.

(f) Notwithstanding any provision of this Section 6226 to the contrary, a Department Head may approve the accumulation of annual leave at a rate of .0574720 hours for each hour of service for the first through the fourth year of service and .076782 for each hour of service for the first through the thirteenth (13<sup>th</sup>) year of service for an employee recruited by that Department Head.

(g) Employees will be paid out their unused annual leave at the time of separation based on the regular hourly base pay. Employees on temporary promotion performing higher level duties in a temporary capacity, upon separation of service will be returned to their regular classification and unpaid leave will be paid at their regular hourly base pay.

#### **§ 6231. Family and Medical Leave.**

(a) The District will provide Family and Medical Leave for an employee as required by state and federal law.

(b) For purposes of this section, "employee" shall mean an employee who has at least one (1) year of service with the District and at least 1,250 hours active service during the one year period immediately preceding the commencement of the request for a Family and Medical Leave.

(c) For purposes of this section, per the U.S. Department of Labor definition at 29 USC Sec. 2611(7) and 29 CFR Sec. 825.122(c), "parent" shall mean a biological, adoptive, step or foster father or mother, or any other individual who stood in *loco parentis* to the employee when the employee was a son or daughter. This term does not include any "parents-in law."

(d) For purposes of this section, "designated person" shall mean a person identified by the employee at the time the employee requests Leave with pay and may include any individual related by blood or whose association with the employee is the equivalent of a family relationship. An employee is limited to one (1) designated person per 12-month period for Family and Medical Leave purposes. (Government Code Sec. 12945.2(b)(2).)



(e) The following provisions set forth certain of the rights and obligations with respect to Family and Medical Leave. Rights and obligations which are not specifically set forth or defined below are contained in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 ("FMLA") and the California Fair Employment and Housing Commission regulations implementing the California Family Rights Act ("CFRA")(Government Code Sec. 12945.2).

(f) Unless otherwise provided by this section, "Family and Medical Leave" and "Leave" shall mean leave pursuant to the FMLA and/or CFRA.

(g) An employee is entitled to a total of twelve (12 ) weeks of Leave during any 12-month period to care for a newborn child, due to the placement of an adopted or foster child, to care for a son or daughter, parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122(c).), spouse, state-registered domestic partner, grandparent, grandchild, sibling or designated person who has a serious health condition, or because of the employee's own serious health condition that prevents the employee from performing any one or more of the essential functions of the employee's position. The 12-month period for calculating Leave entitlement will be the 12-month period measured backward from the date an employee uses any Leave.

(h) An employee's entitlement to Leave for the birth or placement of a child for adoption or foster care expires twelve (12) months after the birth or placement. Parents who are both employed by the District are each entitled up to twelve (12) weeks of Leave for the birth or adoption of a child or the replacement of a foster care child.

(i) Married employees or state-registered domestic partners, who are both employees of the District, and who have an active-duty service member in their family, shall be entitled to qualifying exigency Leave, to manage active duty-related family affairs, and to injured service member care Leave, consistent with FMLA. Refer to military Leave at subsection (r)(1) and (r)(2) of this Section 6231 regarding qualifying exigency Leave and injured service member care Leave.

(j) An employee shall provide at least thirty (30) calendar days written advance notice for foreseeable events. For events which are not foreseeable, the employee shall notify the District as soon as the employee learns of the need for the Leave. To be eligible for a Leave, the employee must follow the District's usual and customary call-in procedures for reporting an absence as detailed in section 6241.

(k) An employee who takes a Leave for their own serious health condition is required to submit a Return to Work / Doctor's Release prior to returning to work.

(l) When the Leave is due to the health condition of the employee, the employee shall utilize Leave in the following order:

(1) All sick leave;

(2) Forty (40) hours of annual leave. If annual leave is exhausted, the employee must choose to use other paid or unpaid leave to complete the forty (40) hours. For regular part-time and Recurrent employees, hours will be adjusted to their standard weekly hours;

(3) The employee has the option of using additional paid leave at full pay. If the employee chooses to use additional paid leave at full pay, it must be used in the following order:

(i) The balance of the employee's annual leave;

(ii) Other paid leave;



(4) If the employee elects to not use additional paid leave at full pay, then the employee shall utilize leave in the following order:

- (i) 75% disability;
- (ii) 50% disability;
- (iii) Annual leave;
- (iv) Other paid leave at the employee's option;
- (v) Unpaid leave;

(5) The exhaustion of the paid leave shall run concurrently with the Leave.

(m) When the Leave is taken for the birth of a child of the employee, for the placement of a child with the employee for adoption or foster care, or to care for the employee's spouse, state-registered domestic partner, son or daughter, parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122 (c).), grandparent, grandchild, sibling or designated person who has a serious health condition or a military family leave, the employee shall utilize Leave in the following order:

- (1) Special leave;
- (2) Optionally, to use a maximum of 240 hours of available sick leave;
- (3) Optionally, to use annual, personal, compensatory time, exempt time off, or recurrent leave;
- (4) Unpaid leave.

The exhaustion of the paid leave shall run concurrently with the Leave. For purposes of this section, leave taken to care for a "designated person" does not apply to military family Leave.

(n) If an employee takes sick leave or partial pay disability leave without requesting Family and Medical Leave, within five (5) days of the employee's return to work and advisement of the District concerning the purpose of the sick leave, the District shall make a determination as to whether the sick leave shall be considered Family and Medical Leave.

(o) The District shall maintain coverage under any group health plan for the duration of the Leave at the level and under conditions that would have been provided had the employee been working. However, the District shall only maintain such group health plan coverage for such employee for up to twelve (12) weeks within a 12-month period commencing with the start of the Leave.

(p) An employee has the right to reinstatement to the same or a comparable position unless the employee is exempted from such right under the provisions of the FMLA or CFRA.

(q) Any leave taken by an employee under the California Fair Employment and Housing Act's provisions applicable to pregnancy-related disabilities cannot be counted against the 12-week limitation on Family and Medical Leaves authorized under CFRA.

(r) Military Family Leave:

The two types of military family Leave available are:

(1) Qualifying Exigency Leave. An employee is entitled to a total of twelve (12) weeks of Leave during any 12-month period to help manage the family affairs of a member who is their spouse,



state-registered domestic partner, son, daughter or parent (as defined by the U.S. Department of Labor in 29 USC Sec. 2611 (7); 29 CFR Sec. 825.122(c).) who is on active duty or is being called to active duty status.

(2) Injured Service Member Care Leave. An employee is entitled to a total of twenty-six (26) weeks of Leave during any 12-month period to care for a covered service member with a serious injury or illness incurred in the line of duty or within five (5) years of the date the service member or veteran undergoes medical treatment, recuperation, treatment, or therapy including aggravation of existing or pre-existing injuries while in the line of duty while on active duty. Employees entitled to this Leave are the spouse, state-registered domestic partner, parent (as defined by U.S. Labor in 29 USC Sec. 2611(7); 29 CFR Sec. 825.122(c).), child or next of kin of the injured or ill service member.

Married employees and state-registered domestic partners who are both employees of the District may be subject to a combined twelve (12) weeks or twenty-six (26) weeks of Leave based on specified family and medical reasons pursuant to FMLA.

#### **§ 6246. Military Leave.**

(a) Every employee who is a member of the National Guard or Naval Militia, or a member of the reserve corps or force in the Federal military, naval or marine service, or in the State Guard, shall be entitled to military leave in accordance with the applicable provisions of the Military and Veterans Code of the State of California. Metropolitan will also comply with Title 38, Chapter 43 of the United State Code (Uniformed Services Employment and Reemployment Rights Act) (“USERRA”). The present law provides, in general, that a person having one (1) year or more of service with the District is entitled to military leave with pay for a period not exceeding thirty (30) calendar days per fiscal year. The military service time of a new employee who comes to the District directly from military service may be applied to the one-year employment requirement necessary to the granting of military leave.

(b) Veterans are entitled, in general, to reemployment if they serve not more than five (5) years in the military, although exceptions allowed by federal law may apply per USERRA. The period a service member has to make a request for reemployment or report back to work after military service is based on time spent on military duty.

(1) For service of less than thirty-one (31) days, the service member must return as the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period.

(2) For service of more than thirty (30) days but less than 181 days, the service member must submit certification of military service for reemployment within fourteen (14) days or release from service.

(3) For service of more than 180 days, certification of military service for reemployment must be submitted within ninety (90) days of completion of a service member’s military service.

Metropolitan may request that an employee who is absent for a period of service of thirty-one (31) days or more provide document showing that their request for reemployment is timely, the employee has not exceeded the five-year service limitation, and the employee’s separation from military service was other than disqualifying under federal law. Military documents may include Military Discharge Documents, DD-214, or Certification of Military Service record.



A reemployed employee may not be discharged without cause: (1) for one (1) year after the date of reemployment if the employee's period of military service was for 181 days or more; (2) For 180 days after the date of reemployment if the employee's period of military service was for thirty-one (31) to 180 days.

Cause for discharge may be based on conduct or the application of legitimate nondiscriminatory reasons. Employees who serve for thirty (30) or fewer days are not protected from discharge without cause. However, they are protected from discrimination because of military service or obligation.

(c) Employees on military leave do not lose their accumulated sick leave credits. The District will restore the veteran to employment as though no interruption of District service has occurred. The District will apply all general pay adjustments enacted by the Board to the old base salary as though the veteran had not been absent. The veteran need not be returned to the former position but will be given a position of status and pay equivalent to the former position. Although the veteran earns no leave while absent on military leave, neither does the veteran lose any leave balances while absent on military leave. Military service time is added to the length of District service for purpose of computing the rate at which a returning veteran will earn annual leave.

(d) If the employee returns to work within six (6) months of their active duty discharge date, and the release was not due to a dishonorable discharge, the employee may submit to CalPERS the Military Leave Service Credit application and documentation for review. CalPERS will determine if the military leave of absence service time will be added to the employee's CalPERS service credit, and if it will be at no cost to the employee, or if the employee will have an option to purchase the additional service credit.

(e) Military Spousal Leave. Every employee who has worked at least an average of twenty (20) hours a week in the last six (6) months and is married to a service member is entitled to ten (10) days leave when their spouse returns from active duty. Employees must notify the District of their intention to take this leave within two (2) business days of receiving official notice that the spouse will be on leave from military deployment, and inform their manager if they intend to use annual, personal or no-pay leave.

## **Chapter 4**

### **OFFICERS**

#### **Article 2**

#### **GENERAL MANAGER**

##### **§ 6416. Annual Report to Executive Committee.**

The General Manager shall annually submit to the Executive Committee a business plan containing the General Manager's key priorities for the coming year. The business plan shall be submitted in conjunction with similar plans by the General Auditor to the Finance, Audit, Insurance, and Real Property Committee, and the Ethics Officer to the Ethics, Organization and Personnel Committee and the General Counsel to the Legal and Claims Committee.



**Article 3****GENERAL COUNSEL****§ 6436. Annual and Quarterly Reports to Legal and Claims Committee.**

(a) The General Manager and General Counsel shall report quarterly to the Legal and Claims Committee the exercise of any power delegated to them by Sections 6433 and 6434. The General Counsel shall report quarterly to the Legal and Claims Committee the exercise of any power delegated to them by Section 6431.

(b) The General Counsel shall annually, in advance of the July Board meetings, submit to the Legal and Claims Committee a business plan containing the Legal Department's key priorities for the coming year for review and approval. The business plan shall be submitted in conjunction with similar plans by the General Manager to the Executive Committee and the General Auditor to the Finance, Audit, Insurance, and Real Property Committee, and the and Ethics Officer to the Ethics, Organization and Personnel Committee.

**Article 5****ETHICS OFFICER**

Sec.

6470. Powers and Duties

6471. Authority to Obtain Professional Services

6472. Reports to Ethics, Organization and Personnel Committee

**§ 6472. Reports to Ethics, Organization and Personnel Committee.**

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

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



**Division VII****GOVERNMENTAL ETHICS****Chapter 4****INVESTIGATION BY THE ETHICS OFFICER****Article 1****AUTHORITY TO INVESTIGATE AND JURISDICTION****§ 7405. Investigations of Directors, General Manager, General Counsel, General Auditor, or Ethics Officer.**

(a) The Ethics Officer shall retain an outside counsel or investigator to conduct any investigation of alleged violations of Metropolitan ethics rules by a Director, General Manager, General Counsel or General Auditor. The investigation shall be conducted in consultation with the Ethics Officer. The Ethics Officer shall, based on the results of the investigation, make the final determination as to whether a violation has occurred. Prior to retaining the outside counsel or investigator, the Ethics Officer shall notify the Ethics, Organization and Personnel Committee Chair, unless the Chair is the subject of the investigation, in which case the Vice Chair shall be notified.

(b) The Ethics Officer shall refer to the General Counsel any complaint of alleged violations of Metropolitan ethics rules by the Ethics Officer or any member of the Office staff. The General Counsel shall retain an outside counsel or investigator to conduct the investigation in consultation with the General Counsel. The General Counsel shall, based on the results of the investigation, make the final determination as to whether a violation has occurred. Prior to retaining the outside counsel or investigator, the General Counsel shall notify the Ethics, Organization and Personnel Committee Chair.

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

**Article 2****PROCEDURES FOR INVESTIGATIONS****§ 7411. Investigation Timeframe.**

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

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

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



**§ 7412. Confidentiality of Investigations.**

- (a) Investigations by the Ethics Officer shall be confidential to the fullest extent possible.
- (b) The Ethics Officer has the discretion to disclose information related to investigations for significant operational or safety reasons.
- (c) The Ethics Officer shall not unnecessarily disclose the identity of the subject of a complaint, except as needed in furtherance of the investigation or otherwise provided by Article 3 of this chapter.
- (d) During the investigation, the Ethics Officer shall advise the subject of the investigation, the complainant, and any witnesses of the confidentiality of the investigation.
- (e) The Ethics Officer may confer with the Chair of the Board and the Chair and Vice Chair of the Ethics, Organization and Personnel Committee on any investigative matter subject to the following:
  - (1) The communications shall be for the purpose of feedback.
  - (2) The communications shall be confidential.
  - (3) The restrictions on interference with investigations in section 7129(d).
- (f) The Ethics Officer shall, to the extent possible, protect the identity of any complainant.





Legal and Claims Committee

# Metropolitan Administrative Code Amendments

Item 7-11

November 14, 2023



Item #7-11

MWD  
Administrative  
Code  
Amendments

Subject

Approve amendments to the MWD Administrative Code to conform to current law, practices, and regulations

Purpose

Board action is required to amend the MWD Administrative Code

Recommendation and Fiscal Impact

Approve; no fiscal impact

Budgeted or Unbudgeted  
Not applicable





• **Board of Directors**  
***Legal and Claims Committee***

11/14/2023 Board Meeting

7-12

**Subject**

Approve amendments to Metropolitan Water District Administrative Code sections 6431 and 6453 to increase the authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 and the General Auditor to obtain professional services to an amount not to exceed \$100,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

**Executive Summary**

The proposed amendments to Administrative Code sections 6431 and 6453 will increase the contracting authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 in any one year in connection with any General Counsel assignment and the General Auditor to obtain independent auditors or other professional or technical consultants relevant to the designated scope and mission in the Administrative Code to an amount not to exceed \$100,000 in any one year under any one contract. With the last increases approved decades ago, the current maximum contract authority to obtain the foregoing services is \$100,000 for the General Counsel and \$40,000 for the General Auditor. The proposed increases would not exceed the general contracting authority of the General Manager per Administrative Code section 8121 or the contracting authority of the Ethics Officer for outside investigators per Administrative Code section 6471(b) and would further streamline the Board's agenda. Adoption would not change the requirement to report these contracts to the Board.

**Timing and Urgency**

A delay in approval would fail to further streamline the Board's agenda thus depriving the Board additional time to consider major policy matters.

**Details**

This letter proposes amendments to Metropolitan's Administrative Code to increase the contracting authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 in any one year in connection with any General Counsel assignment and the General Auditor to obtain related professional services to an amount not to exceed \$100,000 in any one year under any one contract.

The following proposed amendment for the General Counsel's authority is to Division VI, Chapter 4, Article 3 with overstrikes reflecting deletions and underlining reflecting additions:

**§ 6431. Authority to Obtain Expert Assistance.**

The General Counsel is authorized to employ special counsel and investigators to advise or assist them in representing the District, and such technical experts as necessary for proper preparation and presentation of the District's interest in any court action, special proceedings, legislative hearings, or other proceedings whether in or out of court where the assistance of technical experts may be necessary in order to represent the District adequately, so long as the amount to be expended in fees, costs, and expenses in any one year in connection with any assignment will not exceed ~~\$100,000~~ \$250,000.



The following proposed amendment for the General Auditor's authority is to Division VI, Chapter 4, Article 4 with overstrikes reflecting deletions and underlining reflecting additions:

**6453. Authority to Obtain Professional Services.**

The General Auditor is authorized to employ the services of independent auditors or other professional or technical consultants to advise or assist them in performing their assigned duties as may be required or as they deem necessary provided that the amount to be expended in fees, costs, and expenses under any one contract in any one year shall not exceed ~~\$40,000~~ \$100,000. External auditors, while employed as external auditors for Metropolitan, are prohibited from performing any other consulting work for Metropolitan or performing any work for other clients that conflicts, or may conflict, with their responsibilities as Metropolitan's external auditors. These prohibitions shall be included in Metropolitan's agreements with external auditors. The General Auditor shall inform the Finance, Audit, Insurance and Real Property Committee whenever they exercise the authority granted under this section and they shall further report quarterly to the Legal and Claims Committee concerning any agreements entered into under this section.

**Attachment 1** (with changes marked) and **Attachment 2** (clean copy) are attached.

The proposed increases pertain to activities within the normal work plans and activities of the respective department heads. Contracts let under this authority typically include special counsel, investigators, claims consultants, technical experts and trial support services for General Counsel, and for General Auditor the services of independent auditors and other professional or technical consultants, who are needed when the staff does not have the expertise to handle the matter, when a conflict may develop, or when technical experts are necessary to ensure adequate information to protect Metropolitan's interests.

The foregoing contracts are required to be reported quarterly by the General Counsel and the General Auditor to the Legal and Claims Committee per Administrative Code sections 2721 and 6453, and at least quarterly by the General Auditor to the Finance, Audit, Insurance and Real Property Committee per Administrative Code sections 2722 and 6453. These reporting requirements will remain unchanged if the proposed amendments are adopted.

The proposed new maximum amounts payable do not exceed the general contracting authority of the General Manager per Administrative Code section 8121 or the authority of the Ethics Officer to obtain professional services for external investigations, which was increased from \$100,000 to \$250,000 at the August 15, 2023 Board meeting amending Administrative Code section 6471(b). The General Counsel's authority was last approved 29 years ago, on April 12, 1994, when it was increased from \$25,000 to the present \$100,000. The General Auditor's authority was last approved 22 years ago, on April 11, 2000, when it was increased from \$25,000 to the present \$40,000.

The proposed increases in the authority to the maximum amounts payable of \$250,000 and \$100,000, respectively, would further streamline the Board's agenda thus allowing the Board additional time to consider major policy matters.

## Policy

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Metropolitan Water District Administrative Code Section 2721: General Counsel's Quarterly Reports

Metropolitan Water District Administrative Code Section 2722: General Auditor's Quarterly Reports

Metropolitan Water District Administrative Code Section 6431: Authority to Obtain Expert Assistance

Metropolitan Water District Administrative Code Section 6453: Authority to Obtain Professional Services

Metropolitan Water District Administrative Code Section 6471: Authority to Obtain Professional Services

Metropolitan Water District Administrative Code Section 8121: General Authority of the General Manager to Enter Contracts

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities



## California Environmental Quality Act (CEQA)

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### CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because it would not cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). In addition, the proposed action is not defined as a project under CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines).

### CEQA determination for Option #2:

None required

## Board Options

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### Option #1

Approve amendments to Metropolitan Water District Administrative Code sections 6431 and 6453 to increase the authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 and the General Auditor to obtain professional services to an amount not to exceed \$100,000.

**Fiscal Impact:** None

**Business Analysis:** Approval will further streamline the Board's agenda thus allowing the Board additional time to consider major policy matters.

### Option #2

Do not approve amendments to Metropolitan Water District Administrative Code sections 6431 and 6453 to increase the authority of the General Counsel to obtain legal and related services to an amount not to exceed \$250,000 and the General Auditor to obtain professional services to an amount not to exceed \$100,000.

**Fiscal Impact:** None

**Business Analysis:** Not approving will fail to further streamline the Board's agenda.

## Staff Recommendation

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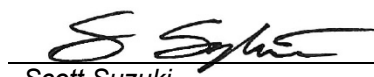
Option #1



Marcia Scully  
General Counsel

11/7/2023

Date



Scott Suzuki  
General Auditor

11/7/2023

Date

**Attachment 1 – The Administrative Code of The Metropolitan Water District of Southern California excerpts (with changes marked)**

**Attachment 2 – The Administrative Code of The Metropolitan Water District of Southern California excerpts (clean version)**



**Division VI****Chapter 4****OFFICERS****Article 3****GENERAL COUNSEL****§ 6431. Authority to Obtain Expert Assistance.**

The General Counsel is authorized to employ special counsel and investigators to advise or assist them in representing the District, and such technical experts as necessary for proper preparation and presentation of the District's interest in any court action, special proceedings, legislative hearings, or other proceedings whether in or out of court where the assistance of technical experts may be necessary in order to represent the District adequately, so long as the amount to be expended in fees, costs, and expenses in any one year in connection with any assignment will not exceed ~~\$100,000~~ \$250,000.

**Article 4****GENERAL AUDITOR****§ 6453. Authority to Obtain Professional Services.**

The General Auditor is authorized to employ the services of independent auditors or other professional or technical consultants to advise or assist them in performing their assigned duties as may be required or as they deem necessary provided that the amount to be expended in fees, costs, and expenses under any one contract in any one year shall not exceed ~~\$40,000~~ \$100,000. External auditors, while employed as external auditors for Metropolitan, are prohibited from performing any other consulting work for Metropolitan or performing any work for other clients that conflicts, or may conflict, with their responsibilities as Metropolitan's external auditors. These prohibitions shall be included in Metropolitan's agreements with external auditors. The General Auditor shall inform the Finance, Audit, Insurance and Real Property Committee whenever they exercise the authority granted under this section and they shall further report quarterly to the Legal and Claims Committee concerning any agreements entered into under this section.



**Division VI****Chapter 4****OFFICERS****Article 3****GENERAL COUNSEL****§ 6431. Authority to Obtain Expert Assistance.**

The General Counsel is authorized to employ special counsel and investigators to advise or assist them in representing the District, and such technical experts as necessary for proper preparation and presentation of the District's interest in any court action, special proceedings, legislative hearings, or other proceedings whether in or out of court where the assistance of technical experts may be necessary in order to represent the District adequately, so long as the amount to be expended in fees, costs, and expenses in any one year in connection with any assignment will not exceed \$250,000.

**Article 4****GENERAL AUDITOR****§ 6453. Authority to Obtain Professional Services.**

The General Auditor is authorized to employ the services of independent auditors or other professional or technical consultants to advise or assist them in performing their assigned duties as may be required or as they deem necessary provided that the amount to be expended in fees, costs, and expenses under any one contract in any one year shall not exceed \$100,000. External auditors, while employed as external auditors for Metropolitan, are prohibited from performing any other consulting work for Metropolitan or performing any work for other clients that conflicts, or may conflict, with their responsibilities as Metropolitan's external auditors. These prohibitions shall be included in Metropolitan's agreements with external auditors. The General Auditor shall inform the Finance, Audit, Insurance and Real Property Committee whenever they exercise the authority granted under this section and they shall further report quarterly to the Legal and Claims Committee concerning any agreements entered into under this section.





Legal and Claims Committee

# Metropolitan Administrative Code Amendments Sections 6431 and 6453

Item 7-12

November 14, 2023



## Item #7-12

### MWD Administrative Code Amendments Sections 6431 and 6453

#### Subject

Approve amendments to the MWD Administrative Code to increase contracting authority of General Counsel to \$250,000 and General Auditor to \$100,000

#### Purpose

Board action is required to amend the MWD Administrative Code

#### Recommendation and Fiscal Impact

Approve; no fiscal impact

Budgeted or Unbudgeted  
Not applicable





Legal and Claims Committee

# 3M and DuPont Proposed PFAS Settlements

Item 8-4

November 14, 2023



## 3M and DuPont Proposed PFAS Settlements

### Item # 8-4

#### Subject

Update on AFFF Products Liability Litigation, consider options, and provide direction on action in response to proposed 3M and DuPont settlements

#### Purpose

Deadlines to opt out are Dec. 4 (DuPont) and Dec. 11 (3M)

#### Recommendation

To be discussed in closed session

#### Fiscal Impact

Unknown

Presentation length: 15 minutes

Unbudgeted



# Overview



Court Filings Since October 10, 2023



Upcoming Deadlines



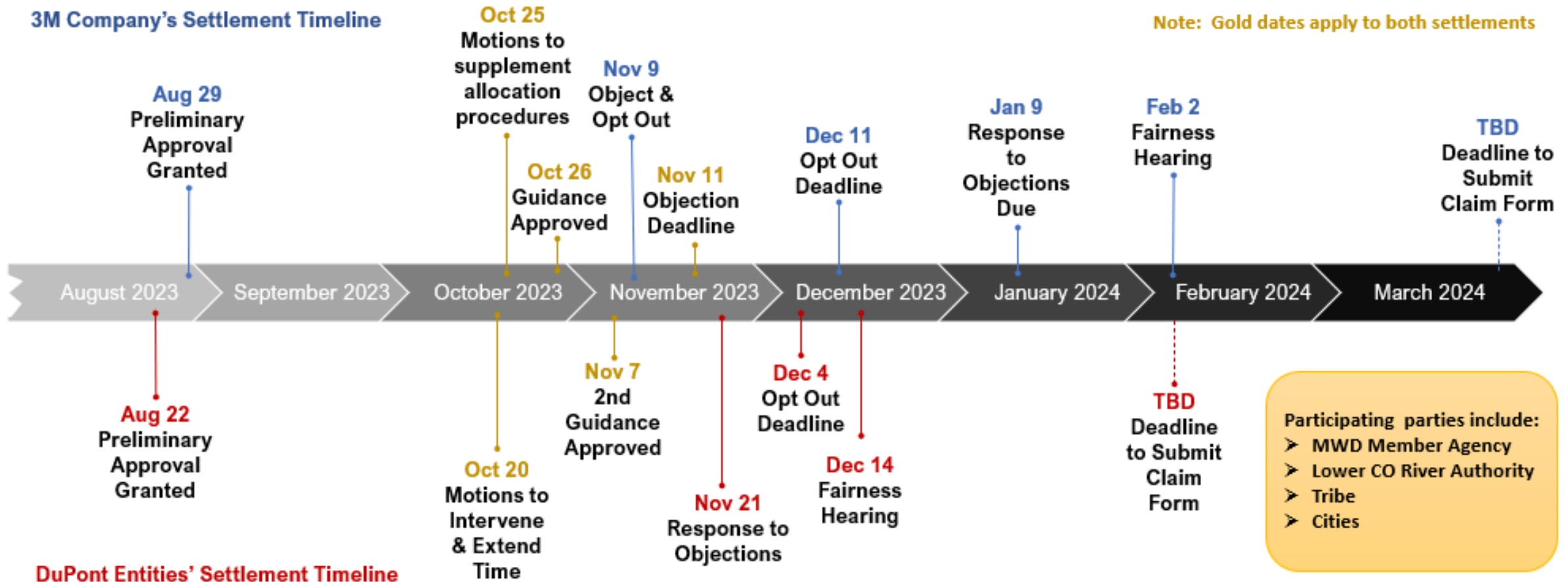
Guidance on Interrelated Drinking Water Systems



# Settlement Timelines

## 3M Company's Settlement Timeline

Note: Gold dates apply to both settlements

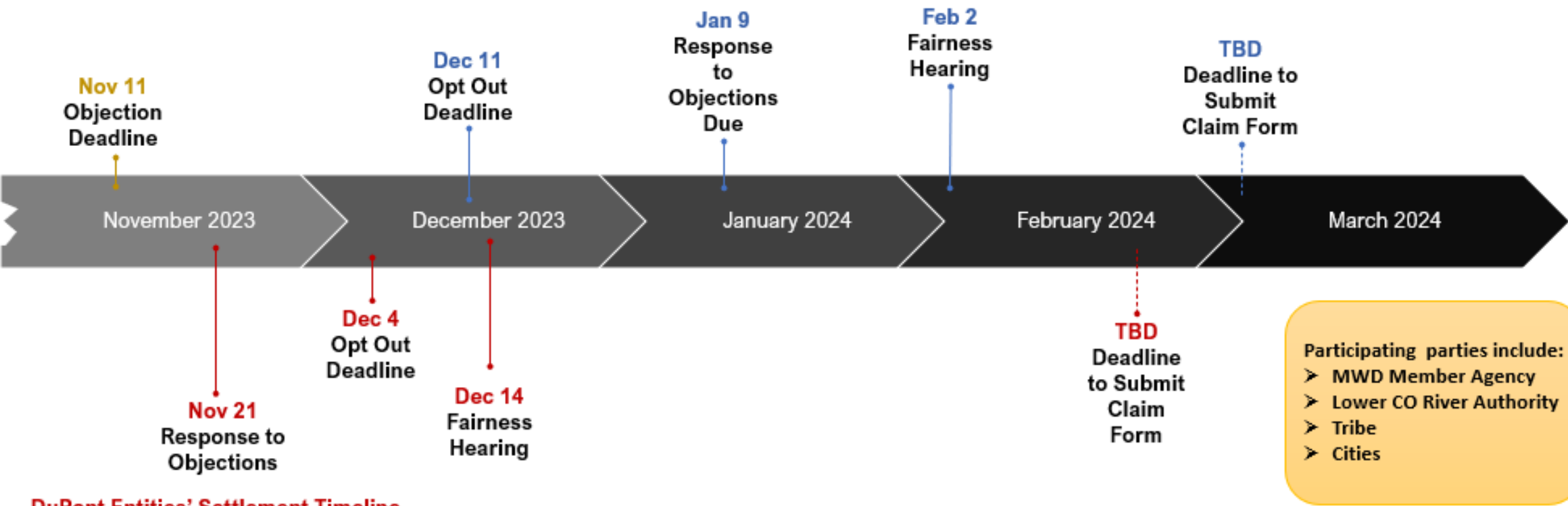




# Settlement Timelines

## 3M Company's Settlement Timeline

Note: Gold dates apply to both settlements



## DuPont Entities' Settlement Timeline



## Guidance on Interrelated Drinking Water Systems

### *Answered Questions*

- Proposed settlements apply to wholesalers
  - Allocation tables not revised
- If wholesaler opts out and retailer participates
  - Release may apply to wholesaler



## Guidance on Interrelated Drinking Water Systems

### Unanswered Questions

- Certification requirement
- Raw water
- Claims Administrator's broad discretion