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 *

August 17, 2021

9:00 a.m.

Tuesday, August 17, 2021
Meeting Schedule

09:00 a.m. - Adj. L&C
10:30 a.m. - Adj. RP&AM
11:30 a.m. - Break
12:00 p.m. - Adj. Board

Agendas, live streaming, meeting schedules, and other board materials are available here: https://mwdh2o.legistar.com/Calendar.aspx. If you have technical difficulties with the live streaming page, 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

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

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

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

2. MANAGEMENT REPORTS

a. General Counsel's report of monthly activities **21-376**

Attachments: 08172021 LC 2a Report - Revised

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

3. CONSENT CALENDAR OTHER ITEMS - ACTION

Zoom Online

A. Approval of the Minutes of the meeting of the Legal and Claims Committee held July 13, 2021 **21-327**

Attachments: LC July 13 Approved minutes

4. CONSENT CALENDAR ITEMS - ACTION

7-8 Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA **20-175**

7-9 Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA **21-333**
[Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] [Posting Separately]

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

5. OTHER BOARD ITEMS - ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

a. Report on the Legal Department's Role in Equal Employment Opportunity Investigations [Added Item on 8/11/2021] **21-399**

Attachments: 08172021 LC 7a C-L
08172021 LC 7a Presentation.pdf

b. General Counsel's Business Plan for Fiscal Year 2021/22 **21-378**

Attachments: 08172021 LC 7b Presentation.pdf

c. Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action and the first 2016 action. [Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] **21-375**

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

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

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

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

Metropolitan Cases

***Staar v. Metropolitan* (Los Angeles County Superior Court)**

In January 2020, Greg Staar, a former probationary employee sued Metropolitan alleging whistleblower retaliation. Mr. Staar claimed he made disclosures to Metropolitan management concerning potential legal risks and that those disclosures were contributing factors to Metropolitan's decision to release him from probationary employment. Mr. Staar filed litigation. In July 2021 prior to trial, Staar and Metropolitan entered into a settlement within the authority of the General Manager and General Counsel. Under the terms of the settlement, Staar dismissed his lawsuit with prejudice and signed a comprehensive release of claims.

***Stronghold Engineering, Inc. v. Metropolitan* (Riverside County Superior Court)**

On July 26, 2021, Metropolitan was served with a complaint filed in Riverside County Superior Court in the case *Stronghold Engineering, Inc. v. Metropolitan*, Case No. CVRI2103080. The contractor alleges MWD breached the contract for Mills Electrical Upgrades - Stage 1A, including the covenant of Good Faith and Fair Dealing and Implied Warranty of Correctness of the Contract Drawings and Specifications, by causing delays to the project and improperly withholding liquidated damages due to the contractor's failure to complete the project within the time specified by the contract. Metropolitan's initial response is due on September 8, 2021.

Matters Impacting Metropolitan

EPA and Corps to Use Pre-2015 Standard Instead of Navigable Waters Protection Rule For Clean Water Act Jurisdiction

On September 3, 2021, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers (collectively, "agencies") announced that they have stopped implementing the Trump administration's 2020 Navigable Waters Protection Rule ("NWPR") and are instead interpreting "waters of the United States" ("WOTUS") consistent with the pre-2015 regulatory regime for the Clean Water Act ("CWA") until further notice. "Waters of the United States" is a term used in the CWA which establishes the CWA's scope of federal jurisdiction. Previously, on June 9, 2021, the agencies had announced their intent to revise the definition of WOTUS in a two-step process: (1) a foundational rule to restore the protections in place before the 2015 Clean Water Rule; and (2) an anticipated second rule that builds on that regulatory foundation. The agencies also conducted several public meetings and requested written pre-proposal recommendations regarding defining WOTUS. Metropolitan submitted a comment letter asking that the definition of WOTUS exclude water supply infrastructure and include any tributary that contributes a significant volume of flow to another WOTUS, as well as for the agencies to allow flexibility in making jurisdictional determinations.

The agencies' most recent announcement came after a federal district court judge in Arizona vacated and remanded the NWPR on August 30, 2021. The judge based her ruling on the "seriousness of the Agencies' errors in enacting the NWPR, the likelihood that the Agencies will alter the NWPR's definition of 'waters of the United States,' and the possibility of serious environmental harm if the NWPR remains in place upon remand . . . ." In the Arizona case, several Native American tribes (represented by Earthjustice) challenged both the NWPR and the agencies' repeal of the 2015 Clean Water Rule. The judge ordered further briefing on the repeal of the 2015 Clean Water Rule.

Several other legal challenges to the 2020 NWPR are ongoing in federal courts in California, Colorado, District of Columbia, Massachusetts, New Mexico, Oregon, South Carolina, and Washington. Metropolitan staff

will continue to monitor these lawsuits and the agencies' rulemaking process, and comment on the agencies' proposed definition of WOTUS.

Other Matters

Continuing Education

On August 30, the Legal Department attended a remote legal training by LexisNexis. The training was to provide an update and refresher session on Lexis for Microsoft Office, the legal service tool used by staff during the preparation of pleadings.

Matters Received by the Legal Department

Category	Received	Description	
Requests Pursuant to the Public Records Act	11	Requestor	Documents Requested
		1898 & Co.	Contract documents relating to Enterprise Data Analytics
		Center for Contract Compliance	Contract documents relating to the Orange County Region Pipelines Phase I
		Cordoba Corporation	MWD easement located on property at 3210 Rainbow Valley Road in the City of Rainbow
		Fox 11 KTTV/KCOP 13	Data on water usage at MWD facilities and whether any facilities use bottled water
		IDAR Group	Contact information for current MWD employees
		Infojini Consulting	Technical and cost proposals and amount spent to date on On-Call Information Technology Services
		MWD Supervisors Association	Transcript and chats from the Coffee with the GM session on August 5, 2021
		Joseph C. Truxaw and Associates	As-built plans for any existing utilities near project in Culver City
		University of California, San Diego, Graduate Student	Data on homes that received turf replacement rebates from 2000-2020
		University of California, San Diego, Professor	Sampling data for pesticides in Colorado River water and copy of the Urban Water Management Plan

Date of Report: September 8, 2020

		Requestor	Documents Requested
		WSP USA	Proposals and task orders for: (1) On-Call Services Engineering Services for Water Treatment Facilities, Conveyance, Storage & Distribution Facilities, and Large Rotating Equipment; and (2) Asset Management Program Planning and Development Services
Other Matters	1	California Department of Fair Employment and Housing Notice of Filing of Discrimination Complaint against MWD	

PLEASE NOTE

- ADDITIONS ONLY IN THE FOLLOWING TABLES WILL BE SHOWN IN RED.
- ANY CHANGE IN CONTRACT AMOUNTS WILL BE SHOWN IN REDLINE FORM (I.E., ADDITIONS, REVISIONS, DELETIONS).

Date of Report: September 8, 2021

Bay-Delta and SWP Litigation	
Subject	**Status**

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 Earl)
	• **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
	  • Sierra Club and DWR motions for summary judgment on CEQA affirmative defense ordered continued to Dec. 17, 2021; two additional motions on CEQA anticipated and must be noticed for same hearing date
	• **CEQA Case**
	  • Sierra Club, Center for Biological Diversity, Planning and Conservation League, Restore the Delta, and Friends of Stone Lakes National Wildlife Refuge filed a standalone CEQA lawsuit challenging DWR's adoption of the bond resolutions
	  • Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project
	  • Cases ordered consolidated for pre-trial and trial purposes
	  • Sierra Club motion for summary judgment on CEQA cause of action hearing ordered continued to Dec. 17, 2021

SWP-CVP 2019 BiOp Cases *Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Raimondo, et al.* (*PCFFA*) *Calif. Natural Resources Agency, et al. v. Raimondo, et al.* (*CNRA*) Federal District Court, Eastern Dist. of California, Fresno Division (Judge Drozd)	• SWC intervened in both *PCFFA and CNRA* cases • Briefing on federal defendants' motion to dismiss CNRA's California ESA claim is complete; no hearing date set and may be decided on the papers • Federal defendants circulated administrative records for each of the BiOps • December 18, 2020 PCFFA and CNRA filed motions to complete the administrative records or to consider extra-record evidence in the alternative with a hearing date of March 2, 2021 • Both cases stayed until Sept. 30, 2021 and federal defendants committed to reinitiating consultation by Oct. 1, 2021
CESA Incidental Take Permit Cases **Coordinated Case Name *CDWR Water Operations Cases*, JCCP 5117** **(Coordination Trial Judge Gevercer)** *Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al.* (CESA/CEQA/Breach of Contract) *State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al.* (CESA/CEQA) *Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources* (CEQA) *San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al.* (CEQA/CESA/ Breach of Contract/Takings) *Sierra Club, et al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust) *North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust) *Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources* (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin) *San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.* (CEQA/CESA)	• All 8 cases ordered coordinated in Sacramento County Superior Court • Stay on discovery issued until coordination trial judge orders otherwise • All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases • SWC and Metropolitan have submitted Public Records Act requests seeking administrative record materials and other relevant information • Answers filed in the three cases filed by State Water Contractors, including Metropolitan's • Draft administrative records due Sept. 16, 2021 • Certified administrative records due early March 2022

CDWR Environmental Impact Cases **Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C091771** **(20 Coordinated Cases)** Validation Action *DWR v. All Persons Interested* CEQA 17 cases CESA/Incidental Take Permit 2 cases	• Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Nine motions for attorneys' fees and costs denied in their entirety • Parties have appealed attorneys' fees and costs rulings • Reply briefs due Oct. 15, 2021
COA Addendum/ **No-Harm Agreement** *North Coast Rivers Alliance v. DWR* Sacramento County Superior Ct. (Judge Gevercer)	• Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC monitoring • Deadline to prepare administrative record extended to Sept. 17, 2021
Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Gevercer) *North Coast Rivers Alliance, et al. v. Delta Stewardship Council* (lead case) *Central Delta Water Agency, et al. v. Delta Stewardship Council* *Friends of the River, et al. v. Delta Stewardship Council* *California Water Impact Network, et al. v. Delta Stewardship Council* **Delta Stewardship Council Cases** 3 Remaining Cases (CEQA claims challenging original 2013 Delta Plan EIR) (Judge Chang) *North Coast Rivers Alliance, et al. v. Delta Stewardship Council* *Central Delta Water Agency, et al. v. Delta Stewardship Council* *California Water Impact Network, et al. v. Delta Stewardship Council*	• Cases challenge, among other things, the Delta Plan Updates recommending dual conveyance as the best means to update the SWP Delta conveyance infrastructure to further the coequal goals • Allegations relating to "Delta pool" water rights theory and public trust doctrine raise concerns for SWP and CVP water supplies • Cases consolidated for pre-trial and trial under *North Coast Rivers Alliance v. Delta Stewardship Council* • SWC granted leave to intervene • Metropolitan supports SWC • 2013 and 2018 cases to be heard separately due to peremptory challenge • SWC and several individual members, including Metropolitan, SLDMWA and Westlands have dismissed their remaining 2013 CEQA claims but remain intervenor-defendants in the three remaining *Delta Stewardship Council Cases* **2013 Cases** • Hearing on merits of CEQA claims in the three remaining 2013 cases re-set for Nov. 5, 2021 **2018 Cases** • July 15, 2021 - Opening Briefs

	• Oct. 13, 2021 - Opposition Briefs • Nov. 22, 2021 - Reply Briefs • Dec. 10, 2021 - Case Management Conference to set hearing on the merits
SWP Contract Extension Validation Action Sacramento County Superior Ct. (Judge Culhane) *DWR v. All Persons Interested in the Matter, etc.*	• DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 7 other SWCs filed answers in support of validity to become parties • Four answers filed in opposition denying validity on multiple grounds raised in affirmative defenses • Case deemed related to the two CEQA cases below and assigned to Judge Culhane • DWR certified the administrative record for the validation action on May 3, 2021 • Parties stipulated to a revised briefing schedule in all three related cases (validation and CEQA): • Opening Briefs Sept. 17, 2021 • Opposition Briefs Nov. 15, 2021 • Reply Briefs Dec. 17, 2021 • Jan. 5, 2022 Hearing on the merits with CEQA cases, below
SWP Contract Extension CEQA Cases Sacramento County Superior Ct. (Judge Culhane) *North Coast Rivers Alliance, et al. v. DWR* *Planning & Conservation League, et al. v. DWR*	• Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • Deemed related to DWR's Contract Extension Validation Action and assigned to Judge Culhane • Administrative Record completed • DWR filed its answers on September 28, 2020 • Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases • Briefing and hearing on the merits same as for the SWP Contract Extension Validation Action, above

Delta Conveyance Project Soil Exploration Case *Central Delta Water Agency, et al. v. DWR* Sacramento County Superior Ct. (Judge Chang)	• Filed August 10, 2020 • Plaintiffs Central Delta Water Agency, South Delta Water Agency and Local Agencies of the North Delta • One cause of action alleging that DWR's adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) for soil explorations needed for the Delta Conveyance Project violates CEQA • March 24, 2021 Second Amended Petition filed to add allegation that DWR's addendum re changes in locations and depths of certain borings violates CEQA • Deadline to prepare the administrative record extended to Sept. 8, 2021
Water Management Tools Contract Amendment *California Water Impact Network et al. v. DWR* Sacramento County Superior Ct. (Judge Earl) *North Coast Rivers Alliance, et al. v. DWR* Sacramento County Super. Ct. (Judge Earl)	• Filed September 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA • NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief • Deadline to prepare the administrative record extended to Sept. 27, 2021 in *CWIN v. DWR* case and Oct. 1, 2021 in *NCRA v. DWR* case • *CWIN* case reassigned to Judge Earl so both cases will be heard together • Trial set for Jan. 14, 2022

San Diego County Water Authority v. Metropolitan, et al.		
Cases	**Date**	**Status**
2010, 2012	Aug. 13-14, 2020	Final judgment and writ issued. Transmitted to the Board on August 17.
	Aug. 28, Sept. 1	SDCWA and Metropolitan filed memoranda of costs.
	Sept. 11	Metropolitan filed notice of appeal of judgment and writ.
	Sept. 14, 16	Metropolitan filed motion to strike SDCWA's costs memorandum, and SDCWA filed motion to strike or tax Metropolitan's costs memorandum.
	Jan. 13, 2021	Court issued order finding SDCWA is the prevailing party on the Exchange Agreement, entitled to attorneys' fees and costs under the contract.
	Feb. 4	Metropolitan filed opening appellate brief regarding final judgment and writ.
	Feb. 10	Court issued order awarding SDCWA statutory costs, granting SDCWA's and denying Metropolitan's related motions.
	Feb. 16	Per SDCWA's request, Metropolitan paid contract damages in 2010-2012 cases judgment and interest. Metropolitan made same payment in Feb. 2019, which SDCWA rejected.
	Feb. 25	Metropolitan filed notice of appeal of Jan. 13 (prevailing party on Exchange Agreement) and Feb. 10 (statutory costs) orders.
	May 7	SDCWA filed responding appellate brief regarding final judgment and writ.
	June 28	Metropolitan filed reply appellate brief regarding final judgment and writ.
	Aug. 5	Metropolitan filed opening appellate brief regarding prevailing party on the Exchange Agreement and statutory costs.
	Sept. 15	Appellate oral argument on Metropolitan's appeal regarding final judgment and writ.
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.
	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western

		Municipal Water District filed joinders to the demurrers and motions to strike.
Cases	**Date**	**Status**
2014, 2016 (cont.)	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.
2017	July 23, 2020	Dismissal without prejudice entered.
2018	July 28	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	SDCWA filed second amended petition/complaint.
	May 25	Metropolitan filed motion to strike portions of the second amended petition/complaint.
	May 25-26	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the motion to strike.
	July 14	Hearing on Metropolitan's motion to strike portions of the second amended petition/complaint.
	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.
Cases	**Date**	**Status**
2014, 2016, 2018	June 11	Metropolitan lodged administrative records.
	June 11, 21	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.
	Sept. 17	Next Case Management Conference.
All Cases	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.
	April 27	SDCWA served notice of deposition of non-party witness.
	May 13-14	Metropolitan filed motions to quash and for protective order regarding deposition of non-party witness.
	June 3	Hearing on motions to quash and for protective order regarding deposition of non-party witness.
	June 4	Ruling on motions to quash and for protective order.

Outside Counsel Agreements				
Firm Name	**Matter Name**	**Agreement No.**	**Effective Date**	**Contract Maximum**
Andrade Gonzalez LLP	MWD v. DWR, CDFW and CDNR Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185894	07/20	$250,000
Aleshire & Wynder	Oil, Mineral and Gas Leasing	174613	08/18	$50,000
Atkinson Andelson Loya Ruud & Romo	Employee Relations	59302	04/04	$1,214,517
	MWD v. Collins	185892	06/20	$60,000
	MWD Drone and Airspace Issues	193452	08/20	$50,000
	Equal Employee Opportunity Commission Charge	200462	03/21	$20,000
	Public Employment Relations Board Charge No. LA-CE-1441-M	200467	03/21	$30,000
	Representation re the Shaw Law Group's Investigations	200485	05/20/21	$50,000
	DFEH Charge (DFEH Number 202102-12621316)	201882	07/01/21	$25,000
	AFSCME Local 1902 in Grievance No. 1906G020 (CSU Meal Period)	201883	07/12/21	$30,000
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	$185,000
	Iron Mountain SMARA (Surface Mining and Reclamation Act)	158043	07/17	$250,000
	Bay-Delta Conservation Plan/Delta Conveyance Project (with SWCs)	170697	08/17	$500,000
	Environmental Compliance Issues	185888	05/20	$50,000
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	$100,000
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	$50,000
	General Real Estate Matters	180209	08/19	$100,000
	~~Delta Conveyance Project Validation Action~~	~~185893~~	~~07/20~~	~~$100,000~~
Law Office of Alexis S.M. Chiu*	Bond Counsel	174595	07/18	N/A
	Bond Counsel	200468	07/21	N/A
Cislo & Thomas LLP	Intellectual Property	170703	08/17	$75,000
Curls Bartling P.C.*	Bond Counsel	174596	07/18	N/A
	Bond Counsel	200470	07/21	N/A
Duane Morris LLP	SWRCB Curtailment Process	138005	09/14	$615,422
Duncan, Weinberg, Genzer & Pembroke PC	Power Issues	6255	09/95	$3,175,000
Ellison, Schneider, Harris & Donlan	Colorado River Issues	69374	09/05	$175,000
	Issues re SWRCB	84457	06/07	$200,000
Haden Law Office	Real Property Matters re Agricultural Land	180194	01/19	$50,000
Hanson Bridgett LLP	SDCWA v. MWD	124103	03/12	$1,100,000
	Finance Advice	158024	12/16	$100,000
	Deferred Compensation/HR	170706	10/17	$ 400,000
	Food and Water Watch v. MWD	174612	09/18	$200,000
	Tax Issues	180200	04/19	$50,000
Hawkins Delafield & Wood LLP*	~~Bond Counsel~~	~~174601~~	~~07/18~~	~~N/A~~
	Bond Counsel	193469	07/21	N/A

Date of Report: September 8, 2021

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Horvitz & Levy	SDCWA v. MWD	124100	02/12	$900,000
	General Appellate Advice	146616	12/15	$100,000
	Food and Water Watch v. MWD Appeal	185862	09/19	$60,000
Hunt Ortmann Palffy Nieves Darling & Mah, Inc.	Construction Contracts/COVID-19 Emergency	185883	03/20	$40,000
Internet Law Center	HR Matter	174603	05/18	$60,000
	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	$40,000
Amira Jackmon, Attorney at Law*	Bond Counsel	200464	07/21	N/A
Jackson Lewis P.C.	Employment: Department of Labor Office of Contract Compliance (OFCCP)	137992	02/14	$45,000
Jones Hall, A Professional Law Corporation*	Bond Counsel	200465	07/21	N/A
Kegel, Tobin & Truce	Workers' Compensation	180206	06/19	$100,000
Lesnick Prince & Pappas LLP	Topock/PG&E's Bankruptcy	185859	10/19	$30,000
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	$201,444
	EEO Investigations	180193	01/19	$100,000
	FLSA Audit	180199	02/19	$50,000
LiMandri & Jonna LLP	Bacon Island Subrogation	200457	03/21	$50,000
Manatt, Phelps & Phillips	In Re Tronox Incorporated	103827	08/09	$540,000
	SDCWA v. MWD rate litigation	146627	06/16	$2,900,000

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	$2,300,000
	IID v. MWD	185900	08/20	$ 410,000
	IID v. MWD (Contract Litigation)	193472	02/21	$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	$300,000
~~Nixon Peabody LLP*~~	~~Bond Counsel~~	~~174600~~	~~07/18~~	~~N/A~~
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A
Olson Remcho LLP	Government Law	131968	07/14	$200,000
	Ethics Office	170714	01/18	$350,000
Quinn Emanuel Urquhart & Sullivan	Appellate	174598	04/18	$100,000
Ryan & Associates	Leasing Issues	43714	06/01	$100,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	$250,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	174599	07/18	N/A
	Bond Counsel	200471	07/21	N/A
	~~Financial Disclosure~~	~~185880~~	~~06/21~~	~~N/A~~
Theodora Oringher PC	OHL USA, Inc. v. MWD	185854	09/19	$900,000
	Construction Contracts - General Conditions Update	185896	07/20	$50,000
Thomas Law Group	MWD v. DWR, CDFW, CDNR – Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185891	05/20	$250,000

Date of Report: September 8, 2021

Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Thompson Coburn LLP	FERC Representation re Colorado River Aqueduct Electrical Transmission System	122465	12/11	$100,000
	NERC Energy Reliability Standards	193451	08/20	$25,000
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
Western Water and Energy	California Independent System Operator Related Matters	193463	11/20/20	$100,000

*Expenditures paid by Bond Proceeds/Finance

Date of Report: September 8, 2021

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

July 13, 2021

Director Tamaribuchi called the teleconference meeting to order at 9:01 a.m.

Members present: Chair Dick (entered after the roll call), Directors Atwater, Camacho, Fellow, Murray, Phan, Record, Smith, and Tamaribuchi.

Members absent: Directors Goldberg and Kassakhian.

Other Directors present: Board Chairwoman Gray, Directors Abdo, Ackerman, Blois, Butkiewicz Cordero, Dennstedt, Erdman, Faessel, Hogan, Jung, Kurtz, Lefevre, Luna, Morris, Peterson, Pressman, and Ramos.

Committee Staff present: Miyashiro, Scully, and Upadhyay.

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

None

2. MANAGEMENT REPORT

a. Subject: General Counsel's report of monthly activities

General Counsel reported Stef Morris, Senior Deputy General Counsel, resigned from Metropolitan to take a position with the Truckee Meadows Water Authority.

She also announced the reordering of the agenda to take Item 7-10 first, move into closed session for presentations on Items 7-11, 7-12, and 7a, then with time allowing, Item 7-9.

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

A. Approval of the Minutes of the Legal and Claims Committee meeting held June 8, 2021.

4. CONSENT CALENDAR ITEMS – ACTION

7-10 Subject: Authorize increase of $100,000, to a maximum amount payable of $300,000, for existing General Counsel contract with Olson Remcho LLP to provide general government law advice related to the Political Reform Act, the Fair Political Practices Commission regulations, conflict of interest law and other legislative and ethics matters; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA

Presented by: None

Motion: Authorize the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by $100,000 to a maximum amount payable of $300,000.

7-11 Subject: Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; and authorize increase of maximum amount payable under contract with Theodora Oringher PC for legal services by $200,000 to an amount not to exceed $900,000 (Approp. 154170); 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: Senior Deputy General Counsel Mark Parsons

Motion: Authorize the General Counsel to increase the amount payable by amendment of the contract with Theodora Oringher PC for legal services by $200,000 for an amount not to exceed $900,000

Senior Deputy General Counsel Mark Parsons gave a report on this item in closed session.

Action was taken in open session.

7-12 Subject: Report on Baker Electric, Inc. v. Metropolitan Water District of Southern California, et al., (Los Angeles Superior Court Case No. 21STCV15612) regarding Metropolitan's CRA 6.9 kV Power Cables Replacement Project, Contract No. 1915; authorize filing cross-complaints; and authorize an increase in the maximum amount payable under contract with Musick, Peeler & Garrett LLP, for legal services by $200,000 to an amount not-to-exceed $300,000; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA.

[Conference with legal counsel - existing litigation and initiating litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1) and 54956.9(d)(4)] [Revised closed session language 7/8/2021]

Presented by: Senior Deputy General Counsel Patrick Rohen

Motion: Authorize filing cross-complaint in *Baker Electric, Inc. v. Metropolitan Water District of Southern California, et al.*, (Los Angeles Superior Court Case No. 21STCV15612); and Authorize an increase in the maximum amount payable under contract with Musick, Peeler & Garrett LLP, for legal services by $200,000 to an amount not-to-exceed $300,000

Senior Deputy General Counsel Patrick Rohen gave a report on this item in closed session.

Action was taken in open session.

Director Fellow made a motion, seconded by Director Atwater, to approve the consent calendar consisting of items 3A, 7-10, 7-11, and 7-12:

The vote was:

Ayes:	Directors Atwater, Camacho, Dick, Fellow, Murray, Phan, Record, Smith, and Tamaribuchi
Noes:	None
Recusal:	None
Abstain:	None
Absent:	Goldberg and Kassakhian

The motion for items 3A, 7-10, 7-11, and 7-12 passed by a vote of 9 ayes, 0 noes, 0 abstain, and 2 absent.

7-9 Subject Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA

This item was deferred to August.

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

a. Subject: Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action and the first 2016 action. **[Conference with legal counsel – existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)]**

Presented by: No presentation was given.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on August 17, 2021.

Meeting adjourned at 10:18 a.m.

Satoru Tamaribuchi
Chair Pro Tem

- Legal and Claims Committee

8/17/2021 Committee Meeting

7a

Subject

Report on the Legal Department's Role in Equal Employment Opportunity Investigations

Executive Summary

The role of the Legal Department in equal employment opportunity (EEO) investigations was discussed as a part of the Shaw Law Group report presented to the Organization, Personnel and Technology Committee at the July 27, 2021 Special Meeting. Staff in the Legal Department (Legal) does not conduct EEO investigations or direct their outcomes. Due to a lack of resources in Human Resources (HR), in early 2019, HR requested that Legal contract with external investigators to conduct EEO investigations until internal investigations staff could be hired by HR. The purpose of this letter is to provide the Board with information about the process.

Details

As stated in the Shaw Law Group report, since early 2019, HR has not had the resources needed to conduct EEO investigations. As a result, HR requested, and Legal agreed to facilitate investigations of EEO complaints by contracting with qualified neutral external investigators to conduct and complete investigations. HR and Legal work collaboratively, and Legal works closely with the EEO manager to coordinate all investigations.

A. Underlying Legal Principles and Metropolitan Policies

Under state and federal law, Metropolitan is obligated to take all reasonable steps to prevent harassment or discrimination based on a person's protected class, or related retaliation. Protected classes encompass many different personal characteristics, including but not limited to race and gender, and prohibited harassment includes sexual harassment.

Metropolitan's policies contained in its Operating Policies and Administrative Code prohibit all harassment, discrimination, and retaliation prohibited by EEO law, and also prevent broader, less severe conduct that would not rise to the level of a violation of law. As part of its broader efforts to prevent workplace discrimination, harassment, and retaliation, Metropolitan employees may make an EEO complaint with the EEO manager without fear of retaliation. All complaints are carefully reviewed and, in many cases, Metropolitan's EEO manager refers complaints for investigation by a neutral outside investigator hired by Legal. Conducting a workplace investigation in appropriate cases is important since failure to do so can impact Metropolitan's ability to prevent discrimination, harassment, or retaliation, or respond to such allegations.

B. The External EEO Investigators Utilized by Legal on Behalf of HR

A list of the EEO investigators currently used by Legal on behalf of HR and their qualifications is attached as **Attachment 1**. Many of the investigators are Association of Workplace Investigators Certificate Holders (AWI-CH) certified investigators with significant experience in workplace investigations. Other investigators are experienced employment attorneys at respected public agency-oriented law firms who have expertise in handling the unique demands of a public sector administrative investigation. Other attorneys are solo practitioners with several years of experience conducting workplace investigations, particularly for public agencies.

C. The EEO Investigation Process

The EEO investigation process typically consists of the following phases: (1) intake of the referral from the EEO manager via a complaint and review of all initial documentation; (2) hiring the external investigator and

identifying the scope of the investigation; (3) coordinating the investigation; and (4) concluding the investigation. Currently, external investigators conduct all EEO investigations. Legal's primary role is to accept referrals from the EEO manager for investigation and to assign the investigation to external investigators. In cases where there is a question regarding the duty to investigate, Legal collaborates with the EEO manager to determine whether an investigation should be performed. In most cases, Legal simply accepts the referral from the EEO manager and assigns the matter to an investigator.

Once an investigation is assigned, the investigator independently researches the facts. During an investigation, attorneys and confidential administrative staff in Legal assist the investigator by ensuring employees receive proper due process notice, coordinating with the bargaining units as needed, scheduling interviews requested by the investigator, and providing the records and evidence requested by the investigator. Legal also provides the investigator with copies of Metropolitan policies and Administrative Code sections and other relevant materials. Attorneys in Legal may respond to procedural or scoping questions from the investigator, and the investigator may also consult with the EEO manager for similar information as necessary to complete the investigation (e.g., personnel records or explanation of HR procedures). Legal reviews the report for issues such as completeness and adequate factual support. Ultimate decisions regarding findings lie entirely with the investigator.

Once the investigation is complete, Legal provides the completed report to the EEO manager, along with all exhibits, unless there is a conflict of interest. Legal is available to consult with the EEO manager regarding any needed follow-up and to advise on whether proposed corrective action steps are legally defensible. Ultimate decisions regarding discipline and other corrective action are made by Employee Relations, EEO, and management.

D. Case Volume

Since the commencement of the public discussions of workplace issues at Metropolitan in 2020, the formation of the DE&I Council, and the initiation of the Shaw Law Group's work, the number of EEO complaints at Metropolitan has increased. The number of external investigations was 10 in calendar year 2019, and 15 in calendar year 2020. Currently, 18 outside investigations have been initiated so far this year. To accommodate the increase, Legal has contracted with additional external investigators and has dedicated additional administrative and attorney staff time to provide support.

Currently, HR's goal, if the positions are authorized, is to hire two EEO investigators so that EEO investigations can be transitioned back to internal staff. A recruitment process is in progress to hire one EEO investigator.

Before 2019, Legal facilitated EEO investigations at the request of HR by using external investigators on a case-by-case basis due to a conflict of interest (such as when a manager in the HR chain of command was the subject of a complaint), occasional staffing limitations, or when HR requested an external investigator to handle a more time-consuming investigation.

Legal agrees with the goal of completing an investigation within 60 – 90 days. At the same time, a one-size-fits-all approach to investigatory deadlines is not practicable, as AWI and other workplace investigations organizations recognize. Many investigations are highly complex, deal with numerous witnesses, voluminous records, multiple different allegations, and entail coordination with involved employees within multiple groups and work units, as well as representatives from multiple bargaining units. Legal also must coordinate with schedules of external investigators who serve multiple clients.

E. Future Involvement of Legal in the Investigation Process

Since 2019, Legal has anticipated that EEO investigations will be transitioned back to internal EEO investigators when the resources are available, except in cases where using an external investigator is appropriate. Legal will remain available to consult with or advise EEO staff on the questions of law related to EEO matters as appropriate. There are many situations in which collaboration between EEO and Legal can be helpful to the process as issues often arise that require legal advice, including: (1) whether an investigation is required; (2) whether any interim measures are necessary; (3) whether the investigation should be conducted under the attorney-client privilege; (4) how to safeguard confidentiality, privacy, due process, and First Amendment rights; and (5) whether and how to disclose the results of the investigation.

Investigations can have a direct impact on not only the affected employees, but also on Metropolitan itself. When imposing discipline on its employees for violating EEO policies, Metropolitan must follow correct procedures, must ensure the constitutional due process and privacy rights of all employees are protected, and must ensure its response to substantiated allegations is appropriate. A legal claim can arise against Metropolitan if it does not properly handle these issues.

In cases where discipline results from an investigation, the discipline can be directly challenged by the subject employee's bargaining unit in an administrative appeal. The administrative hearing is conducted by a neutral hearing officer, with Legal staff attorneys or special counsel under Legal's supervision defending the discipline. The thoroughness and integrity of an investigation directly impact the administrative process and whether disciplinary action will be sustained by the hearing officer. Regardless of the outcome of the investigation, it is important for Legal to be available to consult on investigations, as needed, to ensure fairness and compliance with all requirements and that subsequent actions by Metropolitan management can withstand any challenge.

Policy

Metropolitan Administrative Code Section 6219: Disciplinary Actions

Metropolitan Administrative Code Section 6300: Statement of Equal Opportunity Policy

Metropolitan Administrative Code Section 6303: Objectives of Affirmative Action Program

Metropolitan Administrative Code Section 7111: Nondiscrimination and Harassment

Metropolitan Administrative Code Section 8161: Non-discrimination Practices in District Contracts

Metropolitan Administrative Code Section 4513: Equal Opportunity Requirements

Operating Policy H-07: Equal Employment Opportunity (prohibiting discrimination and harassment based on protected characteristics, and related retaliation)

Operating Policy H-13: Sexual Harassment Prohibition Policy (also prohibiting related retaliation)

Fiscal Impact

None

MScully 8/12/2021

Marcia Scully *Date*
General Counsel

Attachment 1 – EEO Investigators

Ref# I12685696

EEO INVESTIGATORS

Albright Yee & Schmidt

Metropolitan contracts primarily with Clifton Albright, a well-known Los Angeles employment attorney. Mr. Albright typically assigns experienced employment lawyers to handle assigned EEO investigations. Mr. Albright was appointed by both presidents Obama and Trump to the Industry Trade Advisory Committee on Small and Minority Business, and his law firm is recognized by the City and County of Los Angeles as a Minority-Owned Enterprise. Albright, Yee & Schmidt currently represents the County of Los Angeles, City of Los Angeles, Los Angeles Unified School District (LAUSD), Southern California Edison, Commerce Casino, the Los Angeles Department of Water and Power (DWP), Toyota, the Water Replenishment District of Southern California (WRD), and DirecTV in labor, employment and tort matters. Mr. Albright brings tremendous experience in employment litigation and counseling matters to the table for Metropolitan.

Christina K. Dixon – Aecus Law

Ms. Dixon is the managing attorney of Aecus Law, a workplace investigations, employment advice and counseling law firm. Ms. Dixon is a member of the Association of Workplace Investigators and a member of the American Bar Association's Labor and Employment Section. Ms. Dixon gained several years of experience at major international and national law firms where she represented both public entity and private business clients in employment matters. Ms. Dixon also conducts employment audits and counsels clients on all aspects of the employment relationship, including hiring, wage and hour and classification issues, discipline and termination. She received her Juris Doctor from the University of Michigan Law school, where she was an American Indian Graduate Center Fellowship Recipient

Ronald D. Bremen

Metropolitan primarily contracts with attorney Ronald Bremen in connection with misconduct matters. However, Mr. Bremen does receive EEO investigation assignments from time to time. Mr. Bremen is a former police officer with several years of law enforcement investigations experience with different agencies. Most recently, Mr. Bremen worked as a Special Deputy Inspector General for the California Office of Inspector General where he reviewed findings and administrative investigations performed by others. Mr. Bremen has also served as a Workers Compensation Appeals Board judge and spent several years with the United States Department of State, Bureau of Diplomatic Security.

Michael Heider

Metropolitan primarily contracts with attorney Michael Heider to perform misconduct investigations. However, Mr. Heider does receive EEO investigation assignments from time to time as well. Mr. Heider is a retired sergeant with the County of Los Angeles Sheriff's Department. Mr. Heider spent several years in the Sheriff's Advocacy Unit where he supervised employment litigation handled by outside attorneys, worked on Internal Affairs Bureau investigations, and oversaw the prosecution of peace officer misconduct disciplinary cases and the Civil Service Commission appeals. Mr. Heider spent many years as a detective with the Major Crimes Bureau where he investigated serious crimes, including sexual assault cases. Most recently, Mr. Heider worked as a Special Deputy Inspector General for the California Office of Inspector General where he reviewed findings and administrative investigations performed by others.

IMC Law, Inc.

Metropolitan primarily contracts with attorney Lynne Davis, the founding member of IMC Law, Inc. IMC provides employment law independent investigation and mediation services. Ms. Davis specializes in conducting workplace investigations as an independent investigator, and she is a Charter Member of the Association of Workplace Investigators. She has conducted independent investigations of employment-related claims, as well as Title IX discrimination and sexual assault matters, for private and public companies, law firms, private and public universities, community college districts, private schools, and public school districts. IMC provides training for management and non-supervisory employees on any and all employment issues, including required sexual harassment training under AB 1825 and training on harassment, discrimination and retaliation prevention, interviewing practices, bullying, and health and safety. Ms. Davis has been active in the Women's Legal Defense Fund (now known as the National Partnership for Women and Families) and is a member of the Women Lawyers Association of Los Angeles.

Olivarez Madruga Lemieux O'Neill

Metropolitan primarily contracts with attorneys Tom Madruga and Elana Rivkin-Haas for administrative EEO investigations. Both attorneys are highly experienced employment lawyers. Ms. Rivkin-Haas, in particular, has significant experience in workplace investigations, public employment disciplinary matters, and advising public agencies on a variety of issues unique to government employers. She has presented and given training at school districts and professional organizations on a variety of topics including, disability discrimination and the reasonable accommodations process, and sexual harassment prevention. Olivarez Madruga Lemieux O'Neill is a certified minority-owned law firm.

Oppenheimer Investigations Group, LLP

Metropolitan contracts with attorney Amy Oppenheimer, who is the managing partner of the firm. Ms. Oppenheimer is an experienced employment attorney and investigator and has worked with both private and public employers. Ms. Oppenheimer is a retired administrative law judge, and her expertise includes investigating workplace harassment. Ms. Oppenheimer led the founding of the Association of Workplace Investigators and served as its Chair for several years. She has served as neutral for the past twenty-five years as mediator, investigator of employment disputes, arbitrator, trainer, and expert witness. She is a trial-qualified expert on the issue of employment practices in preventing, responding to, and investigating workplace harassment and discrimination, having testified at trial, deposition, and arbitration more than sixty times.

She has served as the past Chair of the Executive Committee of Labor and Employment Section of the State Bar of California, and she is a founder and past president of the board of Association of Workplace Investigators.

Public Interest Investigations, Inc.

Metropolitan contracts primarily with Barbara Dalton, Vice President of Public Interest Investigations, Inc. (PII). Barbara Dalton is an attorney and a licensed private investigator. As vice president of PII, she specializes in conducting third-party investigations into allegations of employment discrimination based on race, gender, disability, age, and sexual orientation. Her work has included conducting investigations at schools, colleges, and universities, including investigations into allegations of sexual misconduct and discrimination brought pursuant to Title IX, and complaints brought under Uniform Complaint Procedures. Dalton serves as a hearing officer for Title IX adjudications and appeal hearings. She has helped develop Title IX trainings for investigators and hearing officers and regularly attends specialized training on conducting Title IX investigations. She has also supervised and conducted investigations of employee and employer misconduct, wage and hour violations, and wrongful termination claims. Ms. Dalton also oversees investigations for Metropolitan, which are handled by experienced employment attorneys at PII. Ms. Dalton is a sustaining member of the Association of Workplace Investigators. PII has also been selected by the Ethics Office to conduct its investigations.

Reddock Law Group

Angela Reddock-Wright is a nationally respected employment lawyer with a particular focus on workplace investigations. She is an AWI-CH certified workplace investigator, and the Los Angeles Business Journal recognizes her as one of the "Most Influential Minority and Women Attorneys." Ms. Reddock-Wright typically assigns attorney Roberta Yang to handle investigations, who is also an experienced employment lawyer and AWI-CH certified workplace investigator and has received training in trauma-informed interview techniques. Ms. Reddock-Wright and Ms. Yang have both been appointed by the Board of Supervisors for the County of Los Angeles to the County Equity Oversight Panel where they evaluate workplace investigations conducted by County staff.

Van Dermyden Maddux

Metropolitan primarily contracts with attorney Deborah Maddux, who is a senior partner at the firm and is an AWI-CH certified workplace investigator. Ms. Maddux is a trained mediator, Title IX hearing officer, and highly experienced employment attorney. She is also a SHRM certified EEOC investigator and has handled workplace discrimination investigations across California, including the state Legislature. Over the past 25 years, she has handled investigations involving the Public Safety Officers Procedural Bill of Rights Act, the Firefighters Procedural Bill of Rights, and Internal Affairs. She is an experienced investigator in Title IX sexual assault claims, and is a founding member of T9 Mastered, a training firm for Title IX investigations. She is experienced in testifying during administrative and judicial proceedings regarding completed investigations. In addition, she has litigated in state and federal courts, including the California Court of Appeals and the California Supreme Court. Similar to the Shaw Law Group, the Van Dermyden Maddux firm has advised and trained employers on best practices for conducting and overseeing workplace investigations.

Susan Woolley

Susan Woolley is an attorney with extensive experience in discrimination and workplace investigations. Among other appointments, Ms. Woolley was appointed by the Board of Supervisors for the County of Los Angeles to the County Equity Oversight Panel where she reviewed and evaluated workplace investigations conducted by the County's staff of over 15 EEO investigators. Ms. Woolley is an adjunct professor at Loyola Law School, where she teaches fact investigation, and is a prominent member of AWI where she provides training on a variety of investigative subjects, including writing investigative reports. Ms. Woolley has designed investigation procedures, developed disciplinary guidelines, and reviewed hundreds of investigations as joint consultant for the U. S. Department of Justice and Major Corporation.

Report on the Legal Department's Role in EEO Investigations

Legal and Claims Committee
Item #7a
August 17, 2021

Legal Principles and Policies

- State and federal law require employers to take reasonable steps to prevent discrimination, retaliation and harassment due to an employee's protected class
- Metropolitan's policies broadly prohibit discrimination, retaliation and harassment
- Metropolitan employees may file a complaint with EEO staff. EEO conducts intake and refers matters that require investigation to Legal
- Complainants and witnesses are protected from retaliation

Background of Legal's Involvement

- Prior to 2019, Legal coordinated EEO investigations in limited circumstances (i.e., conflict of interest, workload issues)
- In 2019, HR requested and Legal agreed to hire outside consultants to handle all EEO investigations until HR hires dedicated investigations staff
- Since 2019, Legal has anticipated the majority of EEO investigations will be transitioned back to internal staff
- After internal staff assumes the lead role, Legal will be available to advise on any legal or handling questions

External Investigators

- Legal currently utilizes a diverse group of attorneys who are highly qualified and experienced in conducting EEO investigations
- Many investigators are certificate holders with the Association of Workplace Investigators

External Investigators cont'd.

- Some investigators have specialized experience in public agency employment law
- Other investigators have specialized experience in handling a variety of administrative investigations for public agencies, such as EEO and misconduct investigations

Legal's Current EEO Investigations Process

Step 1: Intake of Referral From EEO

- In most cases, Legal reviews referral materials and immediately works to contract with an outside investigator
- In a small number of cases, it is unclear whether Metropolitan has a legal duty to investigate. In these cases, Legal will consult with the EEO manager and make a joint decision whether to investigate

Step 2: Hiring the Investigator and Scope

- Legal selects investigators based on particular expertise and availability
- The EEO manager identifies scope of the investigation
- The investigator confirms scope and consults with Legal as necessary

Step 3: Coordinating the Investigation

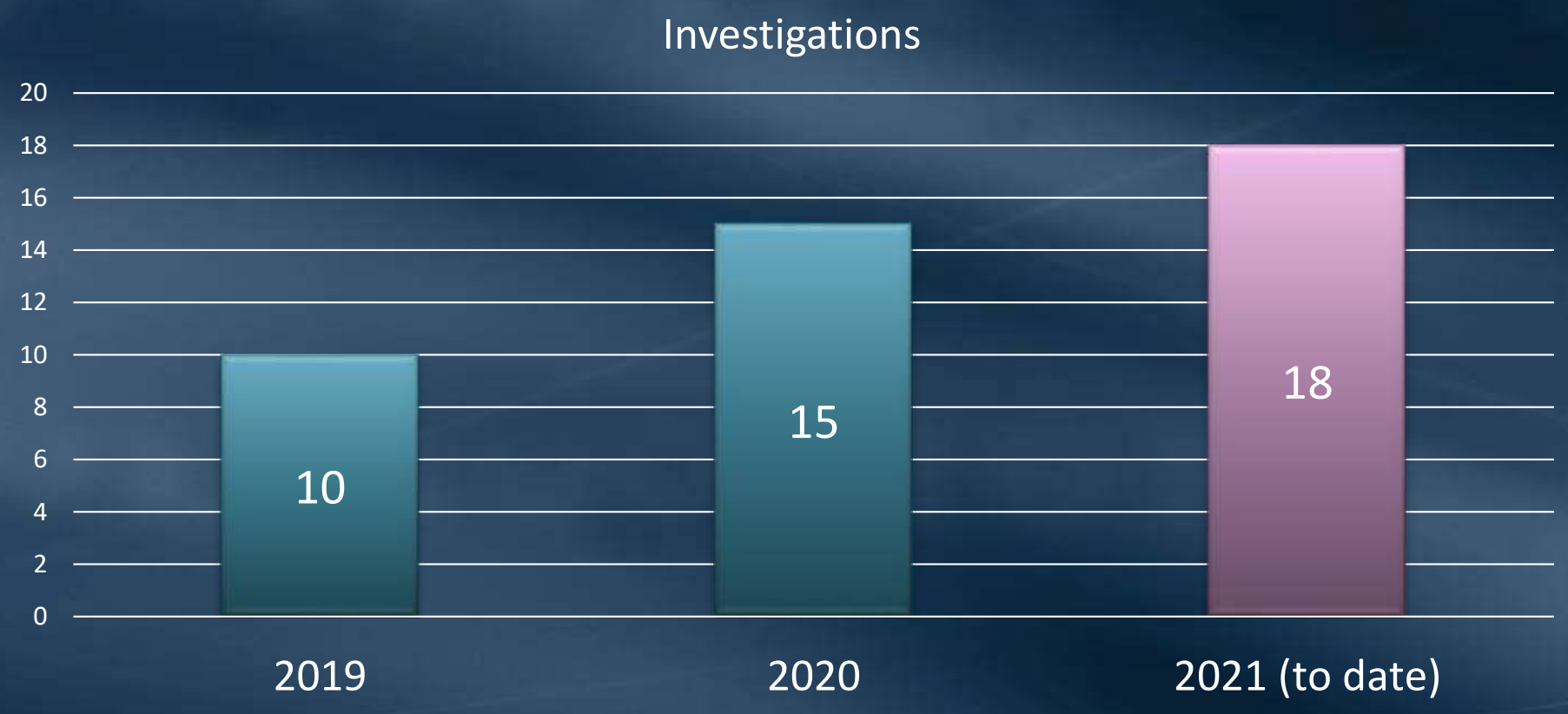
- The investigator works independently
- Legal staff assists with witness coordination, due process issues, conferring with the union as needed, scheduling, obtaining records, identifies persons most knowledgeable on a given subject area as needed, answering procedural questions
- Legal reviews a draft report
- Decisions regarding findings lie entirely with the investigator

Step 4: Concluding the Investigation

- Legal provides complete reports to the EEO manager, along with all exhibits, unless there is a conflict of interest
- The EEO manager issues closing memos to the parties
- Legal is available to consult with the EEO manager and Employee Relations regarding any needed follow up or corrective action
- Ultimate decisions regarding discipline and other corrective actions are made by Employee Relations, EEO, and relevant Group Management

EEO Investigation Case Volume

Since 2019, the number of complaints referred for EEO investigation have increased



Timeliness Goals

- Legal agrees with the goal of a 60-to-90-day completion
- Increased investigation time factors:
  - Many complaints span several years
  - Significant numbers of witnesses and records
  - New allegations identified during an investigation
  - Litigation / outside agency coordination
  - Coordination with union and staff schedules (leaves, etc.)
  - Anonymous complaints involving numerous witnesses
  - Coordination with outside investigator schedules

Discipline Considerations

- Some EEO investigations lead to discipline
- As public employees, Metropolitan staff have the right to appeal discipline, often in an administrative hearing
- The investigation's integrity and thoroughness can be directly challenged in a disciplinary appeal
- Ensuring investigations are conducted properly directly impacts Legal's ability to defend disciplinary action through the appeals process

Legal's Future Involvement in EEO Investigations

- To coordinate EEO investigations in limited cases (conflicts, etc.)
- Advise investigators on various legal issues as needed, such as:
  - Whether a duty to investigate has arisen
  - Whether interim measures, such as separating employees or placing someone on paid administrative leave pending an investigation, are appropriate
  - Whether investigations should be privileged
  - Whether and how to disclose the investigation
  - Safeguarding privacy and due process rights

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA
1928

GENERAL COUNSEL'S BUSINESS PLAN

FY 2021/2022

Legal Department Objectives

Support Metropolitan's Work	**Defend** Metropolitan in Litigation	**Advise** Staff and Board to Minimize Risk

2021-2022: A Year of Transition

New General Manager: New Priorities and Focus

Climate and Hydrology: A Critical Water Year

COVID and Beyond: A New Workplace Reality

Human Resources: Learning and Improving

Anticipated Priorities

WATER SUPPLY RELIABILITY

State Water Project

- Impacts on Permits and Operations
- Protection of SWP Supplies
- Storage
- Contract Amendments
- Curtailments
- Support Delta Conveyance
- Litigation

Colorado River

- Initiation of Consultation
- Water Quality
- Navajo Nation and Other Litigation
- Drought Contingency Plan

Other

- Conservation and Water Supply Mgmt
- Demand Mgmt/Local Supply Development
- Agreements to Move/Transfer Water
- Regional Recycled Water Project
- Emerging Contaminants
- Economic and Supply Impacts
- New Legislation/ Regulations

POWER

Supply Risk/
Volatile Markets
Tied to Hydrology

Regulatory
Requirements

Energy Sustainability/
Climate Action Plan

FINANCE

Budget/
Rate Adoption Process

Financial Transactions/
Debt Issuance

Disclosure Training:
Staff and Board

WORKPLACE ISSUES

- COVID
- Return to Work/ Hybrid Workplace
- MOU Negotiations
- HR/EEO/ DE&I Initiatives
- Increased Claims/ Litigation
- Initiatives/Training

CORPORATE RESOURCES/ INFRASTRUCTURE

- Capital Improvement Program
- Contracts
- CEQA Compliance
- Claims/Litigation
- Business Outreach

OPERATIONS

Service Connections	Coordination with Member Agencies	Compliance w/ Safety Regs
SWRCB	Water Quality Litigation	Legislation

TECHNOLOGY

Rapid Change
New Technologies/
Unstable Vendors

Cyber Security Risk

Data Management/
Record Retention

SCADA System Upgrade

Training:
Staff and Board

REAL PROPERTY

Leasing and Management of Agricultural Land

Employee Housing

Encroachments/ Trespass

Acquisition/ Conveyance

BOARD SUPPORT

Provide Advice to Board of Directors

Coordinate with Board Staff

Review Agendas, Board Letters

LEGAL DEPARTMENT

Staffing/
Succession Planning

Training

Technology Resources