

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 *

September 14, 2021

9:00 a.m.

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=a1RTQWh6V3h3ckFhNmduUWpKR1c2Zz09>

**Tuesday, September 14,
2021**

**09:00 a.m. - L&C
10:30 a.m. - RP&AM
12:00 p.m. - BOD
12:30 p.m. - FNA**

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

[21-459](#)

Attachments: [09142021 LC 2a Report - Revised](#)

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

3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Adjourned Meeting of the Legal and Claims Committee held August 17, 2021 [21-430](#)

Attachments: [09142021 LC 3A Minutes](#)

4. CONSENT CALENDAR ITEMS - ACTION

- 7-7 Authorize an increase in the maximum amount payable under contract with Ryan & Associates for legal services related to general real estate and leasing law issues by \$100,000 to a maximum amount payable of \$200,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [21-463](#)

Attachments: [09142021 LC 7-7 B-L.pdf](#)

- 7-8 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 Oringer PC for legal services by \$200,000 to an amount not to exceed \$1,100,000 (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)] [21-415](#)

- 7-9 Update and authorize the settlement of: (1) Imperial Irrigation District v. The Metropolitan Water District of Southern California, et al., Los Angeles Superior Court Case No. 19STCP01376 and California Court of Appeal Case No. B311674; and (2) Imperial Irrigation District v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 0STCV46404; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA **21-465**
 [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]
 [Letter Added 9/8/2021]

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

4. OTHER BOARD ITEMS - ACTION

None

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

- a. 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)] [21-467](#)

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

Systems Integrated, LLC v. Metropolitan
(Los Angeles Superior Court)

Systems Integrated, LLC (SI) filed a complaint against Metropolitan on May 14, 2021 containing four causes of action—breach of a software license agreement, infringement of common law copyright, misappropriation of trade secrets, and preliminary and permanent injunctive relief.

The lawsuit stems from services provided by SI with respect to Metropolitan’s Supervisory Control and Data Acquisition (SCADA) system and Metropolitan’s ongoing competitive solicitation process for the upgrade of that system. On

May 16, SI filed an *ex parte* application for a temporary restraining order, which the court denied on May 19, following a hearing. The court found that SI had “no reasonable prospect of success without expert testimony” and that SI had failed to provide sufficient evidence to justify a trade secret claim. On August 23, Metropolitan filed a demurrer to all causes of action in SI’s complaint, arguing that (1) SI has failed to state facts giving rise to a breach of contract claim or trade secret claim, (2) SI’s copyright and trade secrets claims are preempted under state and federal law, and (3) SI’s injunctive relief claim is a not a separate cause of action under California law. The hearing on the demurrer will be held on February 9, 2022.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	2	Claims relating to: (1) tree falling and damaging Claimant’s vehicle; and (2) MWD vehicle hitting Claimant’s vehicle that was parked	
Requests Pursuant to the Public Records Act	13	<u>Requestor</u>	
		<u>Documents Requested</u>	
		22nd Century Technologies	Proposal and contract documents relating to Skilled/Technical Temp Labor Staffing
		Brayton & Purcell	Insurance certificates and documents identifying insurance coverage related to work done by Bovee & Crail Construction Co. at the Skinner Filtration Plant and Auld Valley Control Structure
		California Regional Water Quality Control Board, Los Angeles Region	Documents relating to January 1975 board letter on easement involving FFP & Sons, Ltd., residual partnership of Frank F. Pellissier & Sons, Inc., grantor
		CCS Global Tech	Proposal and contract documents for Enterprise Data Analytics
		Center for Contract Compliance (4 requests)	Contract documents relating to (1) Lake Mathews Reservoir Disaster Recovery Facility Upgrades, (2) Perris Valley Pipeline Interstate 215 Tunnels, (3) Diamond Valley Lake Floating Wave Attenuator Repair, and (4) Skinner Survey Building Roof Replacement



<u>Requestor</u>	<u>Documents Requested</u>
Deltek	Contract and bid results for Design Services for District Housing and Property Improvement Program
Envirospectives	Number of communities that receive MWD reuse assistance, amount of recycled water produced
ESA	Winning proposal for Reserve Management: Southwestern Riverside County Multi-Species Reserve
Los Angeles Times	Data on annual payments through the PVID rotational fallowing program to individual landowners and data on acreage fallowed
Transparent California	MWD Compensation Report for 2020

Matters Concluded and/or Terminated

<u>Approval</u>	<u>Case Name</u>
Board-approved settlement 9/14/2021	<i>Imperial Irrigation District v. The Metropolitan Water District of Southern California, et al.</i> , Los Angeles Superior Court Case No. 19STCP01376 and California Court of Appeal Case No. B311674
Board-approved settlement 9/14/2021	<i>Imperial Irrigation District v. The Metropolitan Water District of Southern California</i> , Los Angeles Superior Court Case No. 0STCV46404



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).



Bay-Delta and SWP Litigation	
Subject	Status
<p>Consolidated DCP Revenue Bond Validation Action and CEQA Case</p> <p><i>Sierra Club, et al. v. California Department of Water Resources</i> (CEQA, designated as lead case)</p> <p><i>DWR v. All Persons Interested</i> (Validation)</p> <p>Sacramento County Superior Ct. (Judge Earl)</p>	<ul style="list-style-type: none"> • Validation Action <ul style="list-style-type: none"> • 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, DWR, North Coast Rivers Alliance and Public Agencies’ motions for summary judgment on CEQA affirmative defenses to be heard Dec. 17, 2021 • CEQA Case <ul style="list-style-type: none"> • 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 on Dec. 17, 2021



<p>SWP-CVP 2019 BiOp Cases</p> <p><i>Pacific Coast Fed'n of Fishermen's Ass'ns, et al. v. Raimondo, et al. (PCFFA)</i></p> <p><i>Calif. Natural Resources Agency, et al. v. Raimondo, et al. (CNRA)</i></p> <p>Federal District Court, Eastern Dist. of California, Fresno Division (Judge Drozd)</p>	<ul style="list-style-type: none"> • SWC intervened in both <i>PCFFA</i> and <i>CNRA</i> 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 • <u>Federal defendants reinitiated consultation on Oct 1, 2021 and requested a further two-week stay until Oct. 15</u>
<p>CESA Incidental Take Permit Cases</p> <p>Coordinated Case Name <i>CDWR Water Operations Cases, JCCP 5117</i> (Coordination Trial Judge Gevercer)</p> <p><i>Metropolitan & Mojave Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA/Breach of Contract)</i></p> <p><i>State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al. (CESA/CEQA)</i></p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources (CEQA)</i></p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA/ Breach of Contract/Takings)</i></p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust)</i></p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</i></p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al. (CEQA/CESA)</i></p>	<ul style="list-style-type: none"> • All 8 cases ordered coordinated in Sacramento County Superior Court • Stay on discovery issued until coordination trial judge orders otherwise • All four Fresno cases transferred to Sacramento to be heard with the four other coordinated cases • 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 <u>produced on</u> Sept. 16, 2021 • Certified administrative records due early March 2022



<p>CDWR Environmental Impact Cases Sacramento Superior Ct. Case No. JCCP 4942, 3d DCA Case No. C091771 (20 Coordinated Cases)</p> <p>Validation Action <i>DWR v. All Persons Interested</i></p> <p>CEQA 17 cases</p> <p>CESA/Incidental Take Permit 2 cases</p>	<ul style="list-style-type: none"> • Cases dismissed after DWR rescinded project approval, bond resolutions, decertified the EIR, and CDFW rescinded the CESA incidental take permit • January 10, 2020 – Nine motions for attorneys’ fees and costs denied in their entirety • Parties have appealed attorneys’ fees and costs rulings • Reply briefs due Oct. 15, 2021
<p>COA Addendum/ No-Harm Agreement</p> <p><i>North Coast Rivers Alliance v. DWR</i> Sacramento County Superior Ct. (Judge Gevercer)</p>	<ul style="list-style-type: none"> • Plaintiffs allege violations of CEQA, Delta Reform Act & public trust doctrine • USBR Statement of Non-Waiver of Sovereign Immunity filed September 2019 • Westlands Water District and North Delta Water Agency granted leave to intervene • Metropolitan & SWC monitoring • Deadline to prepare administrative record extended to Sept. 17<u>Nov. 16</u>, 2021
<p>Delta Plan Amendments and Program EIR 4 Consolidated Cases Sacramento County Superior Ct. (Judge Gevercer)</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> (lead case)</p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>Friends of the River, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p> <p>Delta Stewardship Council Cases 3 Remaining Cases (CEQA claims challenging original 2013 Delta Plan EIR) (Judge Chang)</p> <p><i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i></p> <p><i>Central Delta Water Agency, et al. v. Delta Stewardship Council</i></p> <p><i>California Water Impact Network, et al. v. Delta Stewardship Council</i></p>	<ul style="list-style-type: none"> • 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 <i>North Coast Rivers Alliance v. Delta Stewardship Council</i> • 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 <i>Delta Stewardship Council Cases</i> <p>2013 Cases</p> <ul style="list-style-type: none"> • Hearing on merits of CEQA claims in the three remaining 2013 cases re-set for Nov. 5, 2021 <p>2018 Cases</p>



	<ul style="list-style-type: none"> • 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
<p>SWP Contract Extension Validation Action Sacramento County Superior Ct. (Judge Culhane) <i>DWR v. All Persons Interested in the Matter, etc.</i></p>	<ul style="list-style-type: none"> • DWR seeks a judgment that the Contract Extension amendments to the State Water Contracts are lawful • Metropolitan and 7 other SWCs filed answers in support of validity to become parties • 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
<p>SWP Contract Extension CEQA Cases Sacramento County Superior Ct. (Judge Culhane) <i>North Coast Rivers Alliance, et al. v. DWR</i> <i>Planning & Conservation League, et al. v. DWR</i></p>	<ul style="list-style-type: none"> • Petitions for writ of mandate alleging CEQA and Delta Reform Act violations filed on January 8 & 10, 2019 • Deemed related to DWR’s Contract Extension Validation Action and assigned to Judge Culhane • Administrative Record completed • DWR filed its answers on September 28, 2020 • Metropolitan, Kern County Water Agency and Coachella Valley Water District have intervened and filed answers in the two CEQA cases • Briefing and hearing on the merits same as for the SWP Contract Extension Validation Action, above



<p>Delta Conveyance Project Soil Exploration Case <i>Central Delta Water Agency, et al. v. DWR</i> Sacramento County Superior Ct. (Judge Chang)</p>	<ul style="list-style-type: none"> • 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 <u>Nov.</u> 8, 2021
<p>Water Management Tools Contract Amendment <i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Earl)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Earl)</p>	<ul style="list-style-type: none"> • Filed September 28, 2020 • CWIN and Aqualliance allege one cause of action for violation of CEQA • NCRA et al. allege four causes of action for violations of CEQA, the Delta Reform Act, Public Trust Doctrine and seeking declaratory relief • Deadline to prepare the administrative record extended to Sept. 27, 2021 in <i>CWIN v. DWR</i> case and Oct. 1, 2021 in <i>NCRA v. DWR</i> case • <i>CWIN</i> 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.
	<u>Sept. 21</u>	<u>Court of Appeal issued opinion on Metropolitan's appeal regarding final judgment and writ, holding: (1) the court's 2017 decision invalidating allocation of Water Stewardship Rate costs to transportation in the Exchange Agreement price and wheeling rate applied not only to 2011-2014, but also 2015 forward; (2) no relief is required to cure the judgment's omission of the court's 2017 decision that allocation of State Water Project costs to transportation is lawful; and (3) the writ is proper and applies to 2015 forward.</u>



Cases	Date	Status
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.
	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the demurrers and motions to strike.
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.
	<u>Sept. 30</u>	<u>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.</u>
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.



Cases	Date	Status
	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.
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.
	<u>Jan. 12, 2022</u>	Next Case Management Conference. <u>(Sept. 17 Conference postponed.)</u>
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.



Cases	Date	Status
	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
	<u>AFSCME Local 1902 v. MWD, PERB Case No. LA-CE-1438-M</u>	<u>201889</u>	<u>09/15/21</u>	<u>\$20,000</u>
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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Buchalter, a Professional Corp.	Union Pacific Industry Track Agreement	193464	12/07/20	\$50,000
Burke, Williams & Sorensen, LLP	Real Property - General	180192	01/19	\$100,000
	Labor and Employment Matters	180207	04/19	\$50,000
	General Real Estate Matters	180209	08/19	\$100,000
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	193469	07/21	N/A



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
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 <u>\$200,000</u>
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
Theodora Oringer PC	OHL USA, Inc. v. MWD	185854	09/19	-\$900,000 <u>\$1,100,000</u>
	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



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

**LEGAL DEPARTMENT EXPENDITURES BY SOURCE
FISCAL YEAR 20-21**

Legal Budget		\$ 992,818.03
		<i>Firm Name</i>
900352	Andrade Gonzalez LLP	93,063.75
	Atkinson, Andelson, Loya Ruud & Romo	124,463.90
	Best Best & Krieger	19,732.50
	Buchalter, a Professional Corporation	22,405.00
	Burke, Williams & Sorensen, LLP	20,333.65
	Cislo & Thomas LLP	8,666.04
	Haden Law Office	925.00
	Hanson Bridgett LLP	141,785.00
	Horvitz & Levy, LLP	16,938.29
	Internet Law Center	15,297.39
	Lesnick Prince & Pappas LLP	1,086.75
	Liebert, Cassidy & Whitmore	8,619.00
	LiMandri & Jonna LLP	9,164.77
	Miller Barondess, LLP	14,795.00
	Meyers Nave, a Professional Corporation	228,111.84
	Olson Remcho LLP	34,112.80
	Stradling Yocca Carlson & Rauth	5,760.00
	Theodora Oringher PC	2,208.60
	Thomas Law Group	136,391.25
	Thompson Coburn LLP	15,863.50
	Van Dermyden Maddux Law Corporation	22,824.00
	Van Ness Feldman, LLP	2,900.00
	Western Energy and Water	47,370.00

Capital Projects		\$ 409,976.52
		<i>Firm Name</i>
104645	Musick, Peeler & Garrett LLP	30,759.20
103391	Theodora Oringher PC	379,217.32

Bay-Delta		\$ 28,538.81
		<i>Firm Name</i>
601285	Best Best & Krieger LLP	11,736.95
	Burke, Williams & Sorensen, LLP	7,508.00
	Duane Morris LLP	904.36
	Horvitz & Levy, LLP	8,389.50

**LEGAL DEPARTMENT EXPENDITURES BY SOURCE
FISCAL YEAR 20-21**

SIR	<i>Firm Name</i>	\$ 1,008,191.13
900250	Hanson Bridgett LLP	11,454.00
	Horvitz & Levy, LLP	237,088.39
	Liebert, Cassidy & Whitmore	24,540.04
	Manatt, Phelps & Phillips, LLP	568,033.59
	Miller Barondess, LLP	13,128.15
	Swartz, Steinsapir, Dohrmann & Sommers, LLI	5,800.00
	Seyfarth Shaw LLP	148,146.96
		\$ 2,439,524.49

LEGAL DEPARTMENT EXPENDITURES BY SOURCE
FISCAL YEAR 21-22 (thru 09/14/21)

Legal Budget		\$ 102,382.36
<i>Firm Name</i>		
900352	Andrade Gonzalez LLP	2,260.50
	Atkinson, Andelson, Loya Ruud & Romo	43,345.95
	Best Best & Krieger	9,839.00
	Buchalter, a Professional Corporation	172.00
	Burke, Williams & Sorensen, LLP	4,612.50
	Hanson Bridgett LLP	7,590.81
	Internet Law Center	910.00
	Liebert, Cassidy & Whitmore	2,396.60
	Meyers Nave, a Professional Corporation	5,999.00
	Thomas Law Group	490.00
	Thompson Coburn LLP	2,726.00
	Western Energy and Water	22,040.00
Capital Projects		\$ 70,304.35
<i>Firm Name</i>		
104645	Musick, Peeler & Garrett LLP	23,029.60
103391	Theodora Oringher PC	47,274.75
Bay-Delta		\$ 3,167.88
<i>Firm Name</i>		
601285	Best Best & Krieger LLP	430.38
	Burke, Williams & Sorensen, LLP	2,737.50
SIR		\$ 169,711.26
<i>Firm Name</i>		
900250	Hanson Bridgett LLP	1,162.00
	Horvitz & Levy, LLP	26,054.87
	Internet Law Center	14,310.72
	Manatt, Phelps & Phillips, LLP	116,183.67
	Swartz, Steinsapir, Dohrmann & Sommers, LLI	12,000.00
		\$ 345,565.85

**OUTSIDE COUNSEL CONTRACT AMENDMENTS
FISCAL YEAR 20-21**

Firm Name	Matter Name	Agmt #	Amend #	Eff Date	Increase Amt	Contract Amt
Andrade Gonzalez LLP	ITP CESA/CEQA/Contract Litigation	185894	1	06/10/21	\$ 150,000	\$ 250,000
Burke, Williams & Sorensen, LLP	General Real Estate Matters	180209	1	08/15/20	\$ 50,000	\$ 100,000
Cislo & Thomas LLP	Intellectual Property	170703	2	10/07/20	\$ 25,000	\$ 75,000
Hanson Bridgett LLP	Deferred Compensation/HR	170706	3	03/09/21	\$ 100,000	\$ 400,000
Horvitz & Levy, LLP	SDCWA v. MWD	124100	5	02/09/21	\$ 300,000	\$ 900,000
Liebert Cassidy Whitmore	EEO Investigation	180205	1	02/18/21	\$ 20,000	\$ 70,000
Meyers Nave, a Professional Corporation	IID v. MWD	185900	1	02/09/21	\$ 100,000	\$ 200,000
Meyers Nave, a Professional Corporation	IID v. MWD	185900	2	05/11/21	\$ 210,000	\$ 410,000
Thomas Law Group	ITP CESA/CEQA/Contract Litigation	185891	1	10/13/20	\$ 150,000	\$ 250,000

FY 20-21 TOTAL \$ 1,105,000

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

ADJOURNED LEGAL AND CLAIMS COMMITTEE

August 17, 2021

Chair Dick called the teleconference meeting to order at 9:01 a.m.

Members present: Chair Dick, Directors Atwater, Camacho, Fellow, Goldberg, Murray, Phan, Record, Smith, and Tamaribuchi.

Members absent: Director Kassakhian.

Other Directors present: Directors Abdo, Ackerman, Blois, De Jesus, Dennstedt, Erdman, Faessel, Hogan, Jung, Kurtz, Lefevre, Morris, Ortega, Peterson, Pressman, and Ramos.

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

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

None

Chair Dick reported that Chairwoman Gray requested Item 7-8 be deferred to September when she could be included on the discussion.

2. MANAGEMENT REPORT

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

General Counsel reported on item 7-9 regarding the status of the OHL mediation.
(Reported on when Item 7a was called)

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

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

Director Goldberg made a motion, seconded by Director Fellow, to approve the consent calendar consisting of Item 3A:

The vote was:

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

The motion for item 3A passed by a vote of 10 ayes, 0 noes, 0 abstain, and 1 absent.

4. CONSENT CALENDAR ITEMS – ACTION

7-8 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 September.

7-9 Subject 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
**[Conference with legal counsel - existing litigation; to be heard
in closed session pursuant to Gov. Code Section 54956.9(d)(1)]**

This item was deleted.

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

- a. Subject Report on the Legal Department's Role in EEO Investigations

Presented by: Assistant General Counsel Henry Torres

Assistant General Counsel Henry Torres gave a report on this item.

- b. Subject General Counsel's Business Plan for Fiscal Year 2021/22

Presented by: General Counsel Marcia Scully

General Counsel Marcia Scully gave a report on this item.

- c. 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)]

This item was deferred to September.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on September 14, 2021.

Meeting adjourned at 10:36 a.m.

Larry Dick
Chair



- Board of Directors
Legal and Claims Committee

9/14/2021 Board Meeting

7-7

Subject

Authorize an increase in the maximum amount payable under contract with Ryan & Associates for legal services related to general real estate and leasing law issues by \$100,000 to a maximum amount payable of \$200,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

This action authorizes an increase in the maximum amount payable under contract with Ryan & Associates, Attorneys at Law, for advisory legal services related to real estate and commercial leasing law by \$100,000 to a maximum amount payable of \$200,000. Metropolitan retained Ryan & Associates on June 19, 2001, under the General Counsel's authority, to provide expert legal assistance related to provide focused, on-call real estate and commercial leasing legal support. Work since July 2001 has expended the initial contract amount, and additional assistance is required.

Details

Metropolitan owns and maintains more than 200,000 acres of land holdings and pipeline right of ways in order to support its extensive water conveyance, storage, treatment, and supply functions within a 5,200-square-mile service area. The General Counsel's Office supports Metropolitan's strategic approach to the planning, acquisition, and disposition of Metropolitan land and also works with the General Manager's staff to protect Metropolitan's property rights and uses, and to minimize land ownership costs. In addition, the General Counsel's Office provides legal support to Real Property Group's management of Metropolitan's long-standing urban-agricultural partnerships with farming interests and local public agencies and Metropolitan's issuance of innovative agricultural leases and support of regional fallowing programs that decrease crop consumptive water use while still maintaining a vibrant agricultural economy.

These legal efforts occasionally implicate private sector, real estate and commercial leasing legal issues outside of the normal practice of public agency law, ranging from private family-imposed restrictive land covenants to cellular tower leaseback and outsourced property management entities.

Ryan & Associates provides focused real estate, leasing, and land use law advice and legal support services, and value-added legal support in real estate transactions and property management matters. The General Counsel's Office has used this firm under its delegated discretionary authority and has received years of cost-efficient service. Staff requests authority to increase the amount payable under the contract by \$100,000 to a maximum of \$200,000 in order to continue obtaining assistance on an as-needed basis on discrete issues or transactions that implicate real property management, acquisition, and leasing issues that do not regularly arise in public agency law.

Policy

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

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because 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 (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize an increase in the maximum amount payable under contract with Ryan & Associates, Attorneys at Law, for advisory legal services related to real estate and commercial leasing law by \$100,000 to a maximum amount payable of \$200,000.

Fiscal Impact: \$100,000

Business Analysis: Expert special counsel will remain available to assist as needed in discrete real estate and leasing law matters, transactions and dispositions.

Option #2


Do not authorize the contract increase.

Fiscal Impact: Unknown

Business Analysis: Without expert special counsel, the conduct of real property management, acquisitions and dispositions might be more uncertain.

Staff Recommendation

Option # 1



 Marcia Scully
 General Counsel

9/2/2021

 Date