



L&C Committee

- L. Dick, Chair
- Vacant, Vice Chair
- R. Atwater
- M. Camacho
- A. Fellow
- S. Goldberg
- A. Kassakhian
- J. Murray Jr.
- T. Phan
- R. Record
- S. Smith
- S. Tamaribuchi

Legal and Claims Committee - Final - Revised 1

Meeting with Board of Directors *

September 14, 2021

9:00 a.m.

Live streaming is available for all board and committee meetings on our mwdh2o.com website ([Click to Access Board Meetings Page](#))

Public Comment Via Teleconference Only: Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via teleconference only. To participate call (404) 400-0335 and use Code: 9601962.

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

* 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](#)

**** 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 [21-415](#)
 [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)]

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)]

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.

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