

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 2

Meeting with Board of Directors *

November 9, 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=a1RTQWh6V3h3ckFhNmDsUWpKR1c2Zz09>

Tuesday, November 9, 2021 Meeting Schedule

**09:00 a.m. - L&C
10:00 a.m. - OP&T
11:30 a.m. - Break
12:00 p.m. - BOD**

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

[21-636](#)

Attachments: [11092021 LC 2a Report - Revised](#)

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

3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Meeting of the Legal and Claims Committee held October 12, 2021 [21-596](#)

Attachments: [11092021 LC 3A Minutes](#)

4. **CONSENT CALENDAR ITEMS - ACTION**

- 7-15 Authorize an increase of \$150,000, to a maximum amount not to exceed \$250,000 for the workers' compensation legal services contract with the law firm Kegel, Tobin & Truce A.P.C.; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. (ITEM ADDED 11/3/2021) [21-647](#)

Attachments: [11092021 LC 7-15 B-L](#)

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

5. **OTHER BOARD ITEMS - ACTION**

None

6. **BOARD INFORMATION ITEMS**

None

7. **COMMITTEE ITEMS**

- a. Report on Pacific Coast Federation of Fishermen's Assns., et al. v. Ross, et al., Federal District Court for the Eastern District of California, Case No. 1:20-CV-00431-DAD-SAB and Calif. Natural Resources Agency, et al. v. Ross, et al., Federal District Court for the Eastern District of California, Case No. 1:20-CV-00426-DAD-SKO [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(1)] (ADDED ITEM 11/4/2021) [21-653](#)

- b. 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)]

[21-637](#)

8. FOLLOW-UP ITEMS

None

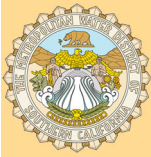
9. FUTURE AGENDA ITEMS

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.



Matters Impacting Metropolitan

EPA and Corps Propose Updated Pre-2015 Definition of WOTUS for Clean Water Act Jurisdiction

On November 18, 2021, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (collectively, “agencies”) announced a proposed rule to re-establish the pre-2015 definition of “waters of the United States” (WOTUS). “Waters of the United States” is a term used in the federal Clean Water Act (CWA) which establishes the CWA’s scope of federal jurisdiction.

As previously reported, the definition of WOTUS has changed multiple times and has been the subject of significant litigation over the past several years.

In 2015 the Obama Administration adopted definitions of WOTUS called the Clean Water Rule.

In 2020, at the direction of President Trump, the agencies acted to repeal the 2015 Rule and replace it with a more limited definition of WOTUS called the Navigable Waters Protection Rule (NWPR). These changes were the subject of multiple legal challenges in multiple courts.

In January 2021, the Biden Administration issued an Executive Order directing a review of rules promulgated under the Trump Administration. Based on that order, the agencies began a new rulemaking process to again change the WOTUS definition. In September 2021, due to multiple pending legal challenges, the agencies announced that they have stopped implementing the NWPR and interpret WOTUS consistent with the pre-2015 regulatory regime.

The pre-2015 regulations were largely in place for both agencies in 1986 and are referred to as “the

1986 regulations.” The agencies’ amendments to the 1986 regulations include the codification of the “significant nexus standard” described in the 2006 U.S. Supreme Court decision, *Rapanos v. United States*. The agencies interpret that standard to mean “waters that either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas.”

The agencies have also applied a “relatively permanent standard” to mean waters that are “relatively permanent, standing or continuously flowing,” and, for other waters and wetlands, “with a continuous surface connection” to such waters.”

The agencies proposed this interim definition of WOTUS to provide “stable implementation” of the CWA while the Biden administration seeks to develop a durable definition that will avoid policy pendulum swings with changes in administrations.

The agencies are hosting virtual public hearings on the proposed rule on January 12, 2022 from 7 a.m. to 10 a.m. PST, January 13, 2022 from 11 a.m. to 2 p.m. PST, and January 18, 2022 from 2 p.m. to 5 p.m. PST. Information regarding the public hearings is available on EPA’s website at <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>.

The agencies will accept comments on this proposed rule for 60 days once it is published in the Federal Register.

Metropolitan staff will continue to monitor these lawsuits and the agencies’ rulemaking process, and will comment on the agencies’ proposed definition of WOTUS. (See General Counsel’s August 2021 Activity Report.)

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>
Government Code Claims	1	Claim relating to MWD vehicle hitting claimant’s vehicle and bike that was on a rack attached to the rear of the vehicle



Subpoenas	1	Deposition Subpoena for Production of Business Records seeking Metropolitan's records from January 1, 2021 to the present relating to Metropolitan's consulting agreement or work with Mercury Public Affairs LLC or any of its prior principals, served in the case <i>Núñez, et al. v. Mercury Public Affairs LLC</i> , Los Angeles County Superior Court Case No. 21STCV36104	
Requests Pursuant to the Public Records Act	12	<u>Requestor</u>	<u>Documents Requested</u>
		Center for Contract Compliance	Contract document relating to electrical upgrades at 15 structures in the Orange County Region
		Deltek	Specifications for Colorado River Aqueduct Pumping Plants Domestic Water Treatment System Replacement
		Edge Point	Data on outstanding/returned checks for \$100 or more which remain stale and/or remain outstanding from 2018 through present
		Los Angeles Times	Communication from California Department of Water Resources regarding minimum water demands for health and safety
		Mt. San Antonio College	Drawings of MWD facilities near Orange County Feeder and Mt. San Antonio College water main pipeline
		MWD Supervisors Association	<u>Written transcript and chats from Coffee with the General Manager session held on November 20, 2021</u> Records on presence of any water pipelines located near proposed new school site in the city of Fontana
		Private Citizen (2 requests)	Proposals or statement of qualifications for On-Call Engineering Services for (1) Seismic and Pipeline Rehabilitation; and (2) Water Treatment Facilities, Conveyance, Storage and Distribution Facilities, and Large Rotating Equipment
		SmartProcure	Purchase order data for the period July 23, 2021 to current
Other Matters	1	WestWater Research (3 requests)	(1) Price per acre-foot in temporary assignment of lease from MWD and San Gabriel Valley Water Company; (2) volume and price for Imperial Irrigation District-MWD transfer in 2021; and (3) volume of water in acre-feet that the Quechan Tribe did not divert in 2021
		Wage garnishment	

Revised



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



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
- Federal defendants reinitiated consultation on Oct 1, 2021
- On Nov. 8, 2021, Federal Defendants and PCFFA plaintiffs stipulated to inclusion of certain records in the Administrative Records and to defer further briefing on the matter until July 1, 2022
- On Nov. 12, 2021, SWC filed a motion to amend its pleading to assert cross-claims against the federal defendants for violations of the ESA, NEPA and WIIN Act; Court has yet to set a hearing date
- November 23, 2021, Federal Defendants filed a motion for voluntary remand of the 2019 Biological Opinions and NEPA Record of Decision and requesting that the Court issue an order approving an Interim Operations Plan through September 30, 2022; that the cases be stayed for the same time period; and that the Court retain jurisdiction during the pendency of the remand. State Plaintiffs filed a motion for injunctive relief seeking judicial approval of the Interim Operations Plan
- December 16, 2021 – NGO Plaintiffs' deadline to file a response or opposition to the Federal Defendants' motion; NGO Plaintiffs' deadline to file a motion for preliminary injunction related to interim operations
- January 10, 2022 - Defendant-Intervenors, including SWC, deadline to file oppositions to motions filed by Federal Defendants, State Plaintiffs, and NGO Plaintiffs; Federal Defendants' deadline to file response or opposition to NGO Plaintiffs' motion for preliminary injunction



	<ul style="list-style-type: none"> • <u>January 24, 2022 – Deadline for any replies in support of Federal Defendants', State Plaintiffs' and NGO Plaintiffs' motions</u> • <u>Hearing date(s) on the motions to be determined by the Court</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.</i> (CESA/CEQA/Breach of Contract)</p> <p><i>State Water Contractors & Kern County Water Agency v. Calif. Dept. of Fish & Wildlife, et al.</i> (CESA/CEQA)</p> <p><i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources</i> (CEQA)</p> <p><i>San Bernardino Valley Municipal Water Dist. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA/ Breach of Contract/Takings)</p> <p><i>Sierra Club, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <p><i>North Coast Rivers Alliance, et al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust)</p> <p><i>Central Delta Water Agency, et. al. v. Calif. Dept. of Water Resources</i> (CEQA/Delta Reform Act/Public Trust/ Delta Protection Acts/Area of Origin)</p> <p><i>San Francisco Baykeeper, et al. v. Calif. Dept. of Water Resources, et al.</i> (CEQA/CESA)</p>	<ul style="list-style-type: none"> • 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 produced on 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 • Appeals fully briefed
<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 Nov. 16, 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 Feb. 25, 2022



	2018 Cases <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
SWP Contract Extension Validation Action Sacramento County Superior Ct. (Judge Culhane) <i>DWR v. All Persons Interested in the Matter, etc.</i>	<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
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>	<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</p> <p><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 Nov. 8, 2021 • <u>Dec. 16, 2021 hearing on DWR's petition to add the 2020 CEQA case to the Department of Water Resources Cases, JCCP 4594, San Joaquin County Superior Court</u>
<p>Water Management Tools Contract Amendment</p> <p><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 • <u>Parties have stipulated to production of a draft administrative record by April 1, 2022 and to a timeline to attempt to resolve any disputes over the contents</u> • 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.
	Aug. 5	Metropolitan filed opening appellate brief regarding prevailing party on the Exchange Agreement and statutory costs.
	Sept. 21	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.
	Sept. 21	SDCWA filed responding appellate brief regarding prevailing party on the Exchange Agreement and statutory costs.
2014, 2016	Aug. 28, 2020	SDCWA served first amended (2014) and second amended (2016) petitions/complaints.



Cases	Date	Status
	Sept. 28	Metropolitan filed demurrers and motions to strike portions of the amended petitions/complaints.
	Sept. 28-29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the demurrers and motions to strike.
	Feb. 16, 2021	Court issued order denying Metropolitan's demurrers and motions to strike, allowing SDCWA to retain contested allegations in amended petitions/complaints.
	March 22	Metropolitan filed answers to the amended petitions/complaints and cross-complaints against SDCWA for declaratory relief and reformation, in the 2014, 2016 cases.
	March 22-23	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the amended petitions/complaints in the 2014, 2016 cases.
	April 23	SDCWA filed answers to Metropolitan's cross-complaints.
	Sept. 30	Based on the Court of Appeal's Sept. 21 opinion (described above), and the Board's Sept. 28 authorization, Metropolitan paid \$35,871,153.70 to SDCWA for 2015-2017 Water Stewardship Rate charges under the Exchange Agreement and statutory interest.
2017	July 23, 2020	Dismissal without prejudice entered.
2018	July 28	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
2018 (cont.)	May 25-26	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the motion to strike.
	July 19	Court issued order denying Metropolitan's motion to strike portions of the second amended petition/complaint.
	July 29	Metropolitan filed answer to the second amended petition/complaint and cross-complaint against SDCWA for declaratory relief and reformation.
	July 29	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed answers to the second amended petition/complaint.
	Aug. 31	SDCWA filed answer to Metropolitan's cross-complaint.
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.
	Oct. 27	Parties submitted to the court a joint stipulation and proposed order staying discovery through Dec. 8 and resetting pre-trial deadlines.
	<u>October 29</u>	<u>Court issued order staying discovery through Dec. 8 and resetting pre-trial deadlines, while the parties discuss the prospect of settling some or all remaining claims and crossclaims.</u>
	Jan. 12, 2022	Next Case Management Conference. (Sept. 17 Conference postponed.)



Cases	Date	Status
All Cases	April 15, 2021	Case Management Conference on 2010-2018 cases. Court set trial in 2014, 2016, and 2018 cases on May 16-27, 2022.
	April 27	SDCWA served notice of deposition of non-party witness.
	May 13-14	Metropolitan filed motions to quash and for protective order regarding deposition of non-party witness.
	June 4	Ruling on motions to quash and for protective order.



Outside Counsel Agreements				
Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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
	Delta Conveyance Project Bond Validation-CEQA Litigation	185899	09/21	\$100,000
	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
	AFSCME Local 1902 v. MWD, PERB Case No. LA-CE-1438-M	201889	09/15/21	\$20,000
	<u>MWD MOU Negotiations**</u>	<u>201893</u>	<u>10/05/21</u>	<u>\$100,000</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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
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	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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Hausman & Sosa, LLP	MOU Hearing Officer Appeal	201892	09/21	\$25,000
Hawkins Delafield & Wood LLP*	Bond Counsel	193469	07/21	N/A
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 \$250,000
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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Manatt, Phelps & Phillips	In Re Tronox Incorporated	103827	08/09	\$540,000
	SDCWA v. MWD rate litigation	146627	06/16	\$2,900,000
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	\$200,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	\$250,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringer PC	OHL USA, Inc. v. MWD	185854	09/19	\$1,100,000
	Construction Contracts - General Conditions Update	185896	07/20	\$50,000 <u>\$100,000</u>
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

**Expenditures paid by another group

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

October 12, 2021

Chair Dick called the teleconference meeting to order at 9:00 a.m.

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

Members absent: Directors Kassakhian and Murray.

Other Directors present: Chairwoman Gray, Directors Abdo, Ackerman, Blois, Cordero, De Jesus, Dennstedt, Erdman, Jung, Kurtz, Lefevre, McCoy, Morris, Ortega, Peterson, 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

2. MANAGEMENT REPORT

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

General Counsel referenced the additional attachments to her monthly report. At the request of Director Ortega, summaries of the Legal Department's expenditures by funding source and outside counsel contract amendments were provided as part of the monthly report.

CONSENT CALENDAR OTHER ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

- A. Approval of the Minutes of the Legal and Claims Committee meeting held September 14, 2021.

Director Atwater made a motion, seconded by Director Fellow, to approve the Minutes:

The vote was:

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

The motion for Item 3A passed by a vote of 9 ayes, 0 noes, 0 abstain, and 2 absent.

4. CONSENT CALENDAR ITEMS – ACTION

7-12 Subject Authorize settlement of *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)]

Presented by: Senior Deputy General Counsel Mark Parsons

In closed session, Senior Deputy General Counsel Mark Parsons gave a report on this item.
The vote was taken in closed session.

In open session, Chair Dick reported that the Committee voted to recommend approval of the proposed settlement.

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: Assistant General Counsel Heather Beatty

Assistant General Counsel Heather Beatty gave a short report on this item in open session.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on November 9, 2021.

Meeting adjourned at 9:36 a.m.

Larry Dick
Chair



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

11/9/2021 Board Meeting

7-15

Subject

Authorize an increase of \$150,000, to a maximum amount not to exceed \$250,000 for the workers' compensation legal services contract with the law firm Kegel, Tobin & Truce A.P.C.; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary and Details

This action authorizes an increase of \$150,000 to the existing contract with the law firm Kegel, Tobin & Truce A.P.C. ("Kegel Tobin") for workers' compensation legal services to a maximum amount not to exceed \$250,000. Metropolitan retained Kegel Tobin on June 12, 2019, under the General Counsel's authority of \$100,000, to provide advice, assistance and representation on workers' compensation matters, including workers' compensation claims, subrogation claims, and representation in litigation. Work since June 2019 has expended the initial contract amount, and Metropolitan continues to need workers' compensation representation.

Under California law, workers' compensation is a "no fault" system and Metropolitan is required to provide certain benefits to injured employees. When disputes arise, claims can become subject to litigation. It is a highly specialized area of law with its own court system, including administrative law judges and an appeals board. Under this contract, the firm provides expertise on all workers' compensation matters, from advice on claims to representation in litigation.

While the rate of expenditure is subject to the nature of the matters and the number of litigated cases, it is anticipated that the increase will be adequate for at least an additional year. Metropolitan receives cost-efficient services for the amount of cases that are handled by Kegel Tobin. On average, Metropolitan may have five to six new litigated cases a year. The firm currently represents Metropolitan in 26 litigated cases.

Staff requests authority to increase the amount under this contract in order to continue obtaining expert advice, assistance and representation for ongoing workers' compensation matters.

Policy

Metropolitan Water District Administrative Code Section 6430: 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, 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; therefore, 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 of \$150,000, to a maximum amount not to exceed \$250,000 for the workers' compensation legal services contract with the law firm Kegel, Tobin & Truce A.P.C.

Fiscal Impact: The sum of \$150,000 is added to this agreement for the provision of the authorized legal services.

Business Analysis: Metropolitan will retain the expertise needed for advice, assistance and representation in workers' compensation matters.

Option #2

Do not authorize the contract increase.

Fiscal Impact: Unknown

Business Analysis: Metropolitan will not have access to the expertise needed to have adequate representation in workers' compensation matters.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

11/4/2021

Date

Ref# I12679756