



L&C Committee

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

Legal and Claims Committee

Meeting with Board of Directors *

February 8, 2022

9:00 a.m.

Teleconference meetings will continue through the end of the year. Live streaming is available for all board and committee meetings on mwdh2o.com ([Click Here](#))

A listen only phone line is also available at 1-800-603-9516; enter code: 2176868#. 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 enter Code: 9601962.

Tuesday, February 8, 2022 Meeting Schedule

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

* 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))

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

2. MANAGEMENT REPORTS

- a. General Counsel's report of monthly activities [21-845](#)

Attachments: [02082022 LC 2A Report.pdf](#)

3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Meeting of the Legal and Claims Committee held January 11, 2022 [21-854](#)

Attachments: [02082022 LC 3A minutes.pdf](#)

4. CONSENT CALENDAR ITEMS - ACTION

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

5. OTHER BOARD ITEMS - ACTION

NONE

6. BOARD INFORMATION ITEMS

NONE

7. COMMITTEE ITEMS

- a. Discussion of Department Head Performance and Goal Setting [Public employees' performance evaluations – General Counsel; to be heard in closed session pursuant to Gov. Code Section 54957] [21-846](#)

- b. Report on litigation, including discussions regarding potential settlement, in 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, 2016, and 2018 actions. [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] [21-847](#)

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

California Supreme Court Addresses Legal Standard of Review in Whistleblower Retaliation Cases

In a unanimous decision, the California high court in *Wallen Lawson v. PPG Arch. Finishes Inc.*, said that the legal standard in California statutory whistleblower retaliation cases differs from the standard federal courts use in anti-discrimination employment lawsuits.

California Labor Code Section 1102.6 provides that when an employee demonstrates by a preponderance of the evidence that an employee’s action to disclose a violation by the employer of state, federal or local law or regulation was a factor in an adverse employment action, the employer shall have the burden of proof to demonstrate that the adverse action would have been taken for legitimate independent reasons.

Prior to the high court’s decision, some lower courts in California had used the federal standard in state whistleblower retaliation cases. Under the federal standard, an employer need only show a legitimate business reason for acting against an employee. In the high court’s written opinion, Justice Leondra Kruger described that federal standard as a “well-worn, but meaningfully different, burden shifting framework.”

Instead of the federal standard, the high court explained that, in accordance with the statute, a California employee suing for whistleblower retaliation need only show that an illegal retaliatory motive was a contributing factor in an employer’s decision to act against the employee. Once the employee makes that showing, the employer has the burden to show by “clear and convincing evidence” that it would have taken the same adverse employment action against the employee for legitimate, independent reasons.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Government Code Claims	1	Claim relating to MWD truck and claimant’s personal items were stolen while parked at a mall	
Subpoenas	1	Subpoena for employment-related records for a former employee for a matter unrelated to Metropolitan	
Requests Pursuant to the Public Records Act	17	<u>Requestor</u>	<u>Documents Requested</u>
		AECOM	Proposal and contract documents for Environmental Planning Phase Engineering Services for Conveyance and Recharging Facilities
		California State University East Bay Student	Data on turf removal rebates from 2014 to the present



<u>Requestor</u>	<u>Documents Requested</u>
Center for Contract Compliance (5 requests)	(1) Certified payroll records and fringe benefit statement for Kaveh Engineering & Construction relating to its work on the West Valley Feeder 1 De Soto Avenue Valve Structure Replacement Project; (2) contract and bid information for San Diego Pipeline Nos. 1 and 2 Patrol Road Relocation; (3) contract and bid information for Dry Polymer Building Roof Replacement; (4) contract and bid information for Skinner Water Treatment Plant Cathodic Protection; and (5) contract and bid information for Mills Electrical Upgrades Stage 2
CCS Global Tech	Bid tabulation, purchase order, and proposal documents for On-Call Information Technology Services
Donahoo & Associates	Contract, bond, and certified payroll records regarding CRA Whitewater Erosion Protection Structure Rehab
E.J. Ward, Inc.	Winning proposal and contract for Fuel Management System
Future Starts Now	Records, including budgets, agendas, notes, invoices, and memos relating to any mention of cloud seeding, weather modification, silver iodide, attenuated bacteria, increasing precipitation, and/or rainmaking from 2000 to the present
HELIX Environmental Planning	Rankings for consultants' responses to requests for qualifications for (1) Biological Resources Management, (2) Cultural Resources Management, (3) Regulatory Permitting and Guidance, (4) General On-Call Environmental Planning Services, and (5) Environmental Planning Support for Specific Future CIP and/or Special Projects; and copies of proposals submitted for Regional Recycled Water Program - Environmental Planning Support
Student, School in the Kern High School District	Water quality data for the Southern California area
Otay Water District Board Member	Data regarding MWD consultants



<u>Requestor</u>	<u>Documents Requested</u>
Private Citizen	Maps showing MWD easements for San Diego Pipelines Nos. 1 and 2 near Patton Avenue
Quality Sprayers	Current contracts with Lawscapes Systems and Powerland Equipment for (1) weed abatement and trash removal service at Skinner, and (2) weed abatement, herbicide application and trash removal service at DVL
Specialty Mowing Service	Winning bid and annual spend for Lake Skinner Distribution System Weed Abatement and Trash Removal Services

Matters Concluded and/or Terminated

Central Delta Water Agency v. California Department of Water Resources – Supreme Court denies review, ending the “Monterey Plus” Litigation

On January 5, 2022, the California Supreme Court denied review in a pair of appeals after the Court of Appeal issued its opinion in September 2021, affirming the trial court rulings in three cases regarding amendments to the State Water Project (SWP) contracts known as the Monterey Plus Amendments and related actions.

The Supreme Court’s action ends 27 years of litigation over contract amendments first agreed to in 1995. Since DWR and the State Water Contractors have been operating under the underlying amendments for decades, the Supreme Court’s denial maintains the status quo, ending decades of uncertainty.

In September 2021, the Court of Appeal upheld the adequacy of the “Monterey Plus” Environmental Impact Report (EIR) issued in 2010, the revised EIR issued in 2016, the validity of the Monterey Amendments and Kern Fan Element Transfer Agreement, and the trial court’s denial of attorneys’ fees. *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170. Plaintiffs argued that the amendments encourage unsustainable farming and place the Kern Water Bank under the control of private farming interests, and that DWR’s environmental analysis overlooked potentially significant impacts to the Bay-Delta.

Metropolitan was an active participant in the many rounds of litigation along with other SWP contractors.

The litigation stems from amendments to the SWP contracts approved in 1995 after an agreement reached in late 1994 in Monterey. Those amendments altered the SWP water allocation procedures in times of shortage by eliminating the so-called “urban preference” and requiring instead that deliveries to both agricultural and urban SWP contractors would, with exceptions, be reduced proportionately. They also transferred land known as the Kern Fan Element from the Department of Water Resources to the Kern County Water Agency (then transferred to the Kern Water Bank Authority to create the Kern Water Bank); authorized permanent sales of water among contractors; and implemented various other changes in administration of the SWP.

Planning and Conservation League (PCL) and other plaintiffs litigated under CEQA and challenged the validity of both the Monterey Amendments and the Kern Fan Element transfer, resulting in a published decision in *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892. The parties settled, and DWR agreed to prepare a new EIR that would cover the original Monterey Amendments, the Kern Fan Element transfer and some additional contract amendments that became known as the “Monterey Plus” project.

In 2010, DWR certified the Monterey Plus EIR, and two new cases were filed. Both challenged the



EIR under CEQA and one challenged the SWP contract amendments and Kern Fan Element transfer. The trial court ruled that the EIR failed to adequately analyze impacts of the Kern Water Bank on adjacent groundwater. In 2016, DWR

certified a Revised Monterey Plus EIR to address the trial court ruling. Two more cases were filed challenging the revised EIR, but the trial court ruled in DWR's favor, and the three appeals ensued that have now been conclusively decided.



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 EarlTBD) <u>(Judge Earl has been appointed as a justice at the Third Appellate District of the California Court of Appeal in Sacramento)</u></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 • <u>DWR's motions for summary judgment re CEQA affirmative defenses granted; cross-motions by opponents denied</u> • 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 • <u>DWR's motion for summary judgment granted; Sierra Club's motion denied</u>



<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 • 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 <u>filed</u> a motion for preliminary injunction related to interim operations • <u>Motions fully briefed as of Jan. 24, 2022</u> • <u>Hearing on motions set for Feb. 11, 2022</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>	<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



<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"> • 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 March 21, 2022



	<ul style="list-style-type: none"> July 22, 2022 hearing on the merits
<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 <p>2018 Cases</p> <ul style="list-style-type: none"> <u>2018 Cases fully briefed as of Jan. 24, 2022, hearing on the merits set for July 22, 2022</u>



<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. 5-7, 2022 Hearing on the merits <u>held</u> 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</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 Feb. 21, 2022 • DWR's petition to add the 2020 CEQA case to the <i>Department of Water Resources Cases</i>, JCCP 4594, San Joaquin County Superior Court denied
<p>Water Management Tools Contract Amendment</p> <p><i>California Water Impact Network et al. v. DWR</i> Sacramento County Superior Ct. (Judge Earl TBD)</p> <p><i>North Coast Rivers Alliance, et al. v. DWR</i> Sacramento County Super. Ct. (Judge Earl TBD)</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 • 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 • <i>CWIN</i> case reassigned to Judge Earl so both cases will be heard together • SWC motion to intervene in both cases granted



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.
	Mar. 16, 2022	Court of Appeal oral argument regarding prevailing party on the Exchange Agreement and statutory costs.



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.
	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.
	October 29	Court issued order staying discovery through Dec. 8 and resetting pre-trial deadlines, while the parties discuss the prospect of settling some or all remaining claims and crossclaims.
	Jan. 12, 2022	Case Management Conference. <u>Court ordered a 35-day case stay to allow the parties to focus on settlement negotiations, with weekly written check-ins with the court; and directed the parties to meet and confer regarding discovery and deadlines.</u>



	<u>Jan. 27, 2022</u>	<u>Parties submitted to the court a joint stipulation and proposed order resetting pre-trial deadlines.</u>
	<u>Feb. 23, 2022</u>	<u>Next Case Management Conference.</u>
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	\$100,000
	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-Howard (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
	MWD MOU Negotiations**	201893	10/05/21	\$100,000
	<u>DFEH Charge-Malvin (DFEH Number 202106-13819209)</u>	<u>203439</u>	<u>12/14/21</u>	<u>\$15,000</u>
Best, Best & Krieger	Navajo Nation v. U.S. Department of the Interior, et al.	54332	05/03	\$185,000
	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
	Tax Issues	180200	04/19	\$50,000
Hausman & Sosa, LLP	Benjamin Brinker NOID Appeal	201892	09/21	\$25,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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
	<u>MWD v. Collins</u>	<u>203449</u>	<u>01/03/22</u>	<u>\$20,000</u>
Hunt Ortmann Palfy 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	\$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
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000
Seyfarth Shaw LLP	HR Litigation	185863	12/19	\$250,000
	Phan v. MWD	201897	11/04/21	\$100,000
	Chavez v. MWD	203436	11/15/21	\$100,000
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	\$100,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Thomas Law Group	MWD v. DWR, CDFW, CDNR – Incidental Take Permit (ITP) CESA/CEQA/Contract Litigation	185891	05/20	\$250,000
	Iron Mountain SMARA (Surface Mining and Reclamation Act)	203435	12/03/21	\$100,000
Thompson Coburn LLP	FERC Representation re Colorado River Aqueduct Electrical Transmission System	122465	12/11	\$100,000
	NERC Energy Reliability Standards	193451	08/20	\$100,000
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

January 11, 2022

Chair Dick called the teleconference meeting to order at 8:30 a.m.

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

Members absent: Director Kassakhian.

Other Directors present: Chairwoman Gray, Directors Abdo, Ackerman, Blois, Cordero, De Jesus, Dennstedt, Erdman, Faessel, Fong-Sakai, Jung, Kurtz, Lefevre, McCoy, Miller, Morris, Ortega, Peterson, Pressman, Quinn, Ramos, and Williams.

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 REPORTS

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

General Counsel reported on the court ruling in the Delta Conveyance Project Bond Validation litigation and the consolidated CEQA case. She also reported on the appellate court ruling in the Monterey Plus cases. Ms. Scully also reported on final resolution of the Monterey Plus cases the court hearing on the state water contract extension.

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

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

No comments on the minutes.

4. CONSENT CALENDAR ITEMS – ACTION

- 7-10** Subject Approve amendments to the Administrative Code to establish changes in the committee structure of the Board; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Presented by: Chairwoman Gray
- Motion: Approve the recommendations for changes in the Metropolitan Administrative Code to modify the Board Committee structure as set forth in **Attachment 1** to Board Letter 7-10 to reflect the new committee structure and duties with the following modifications:
- Include the changes recommended by Director Quinn’s written revisions distributed to the Board with changes to the first paragraph to:
 - change the word “authority” to the word “oversight”; and
 - change “demand management or supply projects” to “demand management or local and regional supply projects“
 - Change 3b of the Board Letter to:
 - Delete “reclamation and their development” and in its place add “recycling and reuse”

The following Directors provided comments or asked questions:

1. Chairwoman Gray
2. Quinn
3. Ortega
4. Lefevre
5. Abdo
6. Sutley
7. Blois
8. Goldberg
9. Kurtz
10. De Jesus
11. Atwater
12. Tamaribuchi
13. Camacho
14. Ackerman
15. Chair Dick
16. Peterson

General Manager Hagekhalil and General Counsel Scully responded to questions.

Director Camacho made a motion, seconded by Director Sutley, to approve the consent calendar consisting of Items 3A and 7-10:

The vote was:

Ayes: Directors Atwater, Camacho, Dick, Fellow, Goldberg, Phan, Record, Smith, Sutley, and Tamaribuchi
Noes: Chair Dick item 7-10 only
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.
The motion for Item 7-10 passed by a vote of 9 ayes, 1 no, 0 abstain, and 1 absent.

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

- a. Subject Report on litigation, including discussions regarding potential settlement, in 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, 2016, and 2018 actions. [**Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)]**]

Presented by: General Manager Adel Hagekhalil and General Counsel Marcia Scully

Directors Fong-Sakai, Goldberg, Miller, and Smith, representing the San Diego County Water Authority, withdrew from the meeting for the report on this item.

Director Phan recused herself for the report on this item.

In closed session, General Manager Adel Hagekhalil gave a report on this item with input from General Counsel Marcia Scully.

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on February 8, 2022.

Meeting adjourned at 10:51 a.m.

Larry Dick
Chair