

The Metropolitan Water District of Southern California

Agenda

The mission of the Metropolitan Water District of Southern California is to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

L&C Committee

M. Luna, Chair
J. Garza, Vice Chair
M. Camacho
G. Cordero
L. Dick
C. Douglas
C. Kurtz
T. McCoy
C. Miller
G. Peterson
M. Ramos
K. Seckel

Legal and Claims Committee - Final - Revised 1

Meeting with Board of Directors *

October 11, 2022

8:30 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, October 11, 2022 Meeting Schedule

**08:30 a.m. L&C
09:30 a.m. OP&T
10:30 a.m. RP&AM
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

[21-1579](#)

Attachments: [10112022 LC 2A Report - Revised](#)

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

3. CONSENT CALENDAR OTHER ITEMS - ACTION

- A. Approval of the Minutes of the Meeting of the Legal and Claims Committee held September 13, 2022 [21-1580](#)

Attachments: [10102022 LC 3A Minutes](#)

4. **CONSENT CALENDAR ITEMS - ACTION**

- 7-10 Authorize a \$300,000 settlement of Metropolitan claims against the federal government for the recovery of costs resulting from damages to Metropolitan infrastructure due to the crash of a military helicopter; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel- potential litigation (1 case); may be heard in closed session pursuant to Gov. Code Section 54956.9(d) (4)]. [REVISED LANGUAGE] [21-1561](#)

Attachments: [10112022 LC 7-10 B-L](#)
[10112022 LC 7-10 Presentation](#)

- 7-12 Approve amendments to the Administrative Code to comply with recommendations of the California State Auditor regarding reporting requirements to the Board of Directors on personnel-related settlements and the contracting authority of the Ethics Officer; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. [ADDED ITEM] [21-1597](#)

Attachments: [10112022 LC 7-12 B-L](#)

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

5. **OTHER BOARD ITEMS - ACTION**

NONE

6. **BOARD INFORMATION ITEMS**

NONE

7. **COMMITTEE ITEMS**

- a. Report on litigation 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)] [21-1578](#)

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 Received

<u>Category</u>	<u>Received</u>	<u>Description</u>	<u>Documents Requested</u>
Requests Pursuant to the Public Records Act	6	<u>Requestor</u>	
		Costin Public Outreach Group	Solicitations for Public Outreach On-Call Services
		HDR, Inc.	Responses to Request for Proposal for Regional Recycled Water Program – Environmental Planning Support
		Mark Company	MWD Standard Detail Book
		MWD Supervisors Association	State Auditor's recommendations to MWD's EEO Office referenced in the General Manager's September 2022 Monthly Report
		Omega Engineering Consultant	Water and sewer service letters for property being developed in Riverside
Other	1	Salt Partners	MWD contract for sodium chloride, including quantity, price, and quality
		Notice of Appeal of Bid Protest Determination from Gilman Builders, Inc., appealing MWD's determination letter relating to the project for MWD Headquarters Building Exterior Physical Security Improvements	

PLEASE NOTE

- ADDITIONS ONLY IN THE FOLLOWING TWO TABLES WILL BE SHOWN IN RED.
- ANY CHANGE TO THE *OUTSIDE COUNSEL AGREEMENTS* TABLE 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 Kenneth C. Mennemeier)</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 • DWR's motions for summary judgment re CEQA affirmative defenses granted; cross-motions by opponents denied • August 25, 2022 North Coast Rivers Alliance filed motion for summary judgment on Delta Reform Act and public trust doctrine affirmative defenses; DWR filed motion for summary adjudication of all Delta Reform Act and public trust doctrine affirmative defenses; Metropolitan and other supporting water contractors joined DWR's motion; Howard Jarvis Taxpayers Assn. filed motion for summary adjudication on scope of DWR's complaint re Prop 13 applicability to future taxes that may be adopted to repay bonds • Nov. 18, 2022 Hearing on dispositive motions • Dec. 9, 2022 Case Management Conference • 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



	<p>Lakes National Wildlife Refuge filed a standalone CEQA lawsuit challenging DWR's adoption of the bond resolutions</p> <ul style="list-style-type: none"> • Alleges DWR violated CEQA by adopting bond resolutions before certifying a Final EIR for the Delta Conveyance Project • Cases ordered consolidated for all purposes • DWR's motion for summary judgment granted; Sierra Club's motion denied • Aug. 23, 2022 Sierra Club filed motion for new trial or reconsideration on prior dismissal of its CEQA case and seeking entry of summary judgment in its favor • Nov. 18, 2022 hearing on motion for new trial or reconsideration re CEQA • Dec. 9, 2022 case management conference
<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 Thurston)</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



	<p>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.</p> <ul style="list-style-type: none"> December 16, 2021 – NGO Plaintiffs filed a motion for preliminary injunction related to interim operations Motions fully briefed as of Jan. 24, 2022 Hearing on motions held Feb. 11, 2022 District court (1) approved the State and Federal Government's Interim Operations Plan (IOP) through September 30, 2022; (2) approved the federal defendants' request for a stay of the litigation through September 30, 2022; (3) remanded the BiOps without invalidating them for reinitiated consultation with the 2019 BiOps in place; (4) denied PCFFA's alternative request for injunctive relief; and (5) by ruling on other grounds, denied the state plaintiffs' motion for injunctive relief and the federal defendants' request for equitable relief September 30, 2022, Federal Defendants and State Plaintiffs filed a joint status report: 1) describing the status of the reinitiated CVP and SWP consultation; 2) recommending a plan for interim CVP and SWP operations to govern for the 2023 water year or some other interval of time, if consultation remains ongoing; and 3) requesting a continued stay or other path forward in the litigation
<p>CESA Incidental Take Permit Cases</p> <p>Coordinated Case Name <i>CDWR Water Operations Cases</i>, JCCP 5117 (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>	<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



<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"> • Draft administrative records produced on Sept. 16, 2021 • Certified administrative records lodged March 4, 2022 • State Water Contractors et al. granted leave to intervene in Sierra Club, North Coast Rivers Alliance, Central Delta Water Agency, and San Francisco Baykeeper cases by stipulation • Sept. 9, 2022 fifth Case Management Conference • Sept. 9, 2022 Court ordered DWR and CDFW to produce privilege logs to the State Water Contractors et al. by Sept. 30, 2022 showing the basis for withholding hundreds of records from the administrative records on the deliberative process and official information privileges, then meet and confer; State Water Contractors et al. may renew their motion to augment if disputes remain • Sept. 29, 2022 State Water Contractors, et al.'s motion to intervene as petitioners in the <i>Tehama-Colusa Canal Auth., et al. v. Calif. Dept. of Water Resources</i> CEQA case denied without prejudice to re-filing a motion to intervene as respondents
<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> <p>(Judge TBD)</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 • May 11, 2022, court of appeal reversed the trial court's denial of attorney fees and costs in an unpublished opinion • Opinion ordered published • Coordinated cases remitted to trial court for re-hearing of fee motions consistent with the court of appeal's opinion
<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



	<ul style="list-style-type: none"> Metropolitan & SWC monitoring Deadline to prepare administrative record extended to Nov. 18, 2022
<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 One Remaining Case (CEQA claims challenging original 2013 Delta Plan EIR) (Court of Appeal for the Third App. Dist. Case No. C096380)</p> <p><i>North Coast Rivers Alliance, 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"> After a hearing on Feb. 25, 2022 the court ruled against plaintiffs on the merits of their BDCP-related CEQA claims April 22, 2022 court ruled against the remaining CEQA claims and denied the petitions for writs of mandamus Delta Stewardship Council filed memorandum of costs seeking \$362,407.47, mostly for cost to prepare the administrative record SWC and individual water contractors, including Metropolitan, entered a settlement with the Delta Stewardship Council on their share of costs for \$45,435, of which Metropolitan has paid \$6,490.71 <u>Last remaining case, <i>North Coast Rivers Alliance, et al. v. Delta Stewardship Council</i> has been abandoned, ending the 2013 cases</u> <p>2018 Cases</p> <ul style="list-style-type: none"> Hearing on the merits held July 22, 2022 Ruling on the merits <u>pending</u>



<p>SWP Contract Extension Validation Action Court of Appeal for the Third App. Dist. Case No. C096316</p> <p><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• Jan. 5-7, 2022 Hearing on the merits held with CEQA cases, below• Final statement of decision in DWR's favor filed March 9, 2022• Final judgment entered and served• C-WIN et al., County of San Joaquin et al. and North Coast Rivers Alliance et al. filed notices of appeal
<p>SWP Contract Extension CEQA Cases Court of Appeal for the Third App. Dist. Case Nos. C096384 & C096304</p> <p><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• Final statement of decision in DWR's favor denying the writs of mandate filed March 9, 2022• Final judgments entered and served• North Coast Rivers Alliance et al. and PCL et al. filed notices of appeal• Nov. 1, 2022 Planning & Conservation League's Opening Brief and Appendix Due



Delta Conveyance Project Soil Exploration Cases

Central Delta Water Agency, et al. v. DWR
Sacramento County Superior Ct.
(Judge Chang)

Central Delta Water Agency, et al. v. DWR (II),
Sacramento County Super. Ct.
(Judge Acquisto)

- Original case filed August 10, 2020; new case challenging the second addendum to the CEQA document filed Aug. 1, 2022
- 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 April 22, 2022
- DWR's petition to add the 2020 CEQA case to the *Department of Water Resources Cases*, JCCP 4594, San Joaquin County Superior Court denied
- Hearing on the merits held Oct.13, 2022
- Ruling on the merits pending

Water Management Tools Contract Amendment

California Water Impact Network et al. v. DWR
Sacramento County Superior Ct.
(Judge Aquisto)

North Coast Rivers Alliance, et al. v. DWR
Sacramento County Super. Ct.
(Judge Aquisto)

- 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
- 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.
	Sept. 11	Metropolitan filed notice of appeal of judgment and writ.
	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. 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.
	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.
	Mar. 17, 2022	Court of Appeal unpublished decision affirming orders determining SDCWA is the prevailing party in the Exchange Agreement and statutory costs.
	Mar. 21	Metropolitan paid SDCWA \$14,296,864.99 for attorneys' fees and \$352,247.79 for costs, including interest.
	July 27	Metropolitan paid SDCWA \$411,888.36 for attorneys' fees on appeals of post-remand orders.
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.



Cases	Date	Status
2014, 2016 (cont.)	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, 2020	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, 2021	SDCWA filed second amended petition/complaint.
	May 25	Metropolitan filed motion to strike portions of the second amended petition/complaint.
	May 25-26	Member agencies City of Torrance, Eastern Municipal Water District, Foothill Municipal Water District, Las Virgenes Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, West Basin Municipal Water District, and Western Municipal Water District filed joinders to the motion to strike.



Cases	Date	Status
2018 (cont.)	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.
	April 11, 2022	Court entered order of voluntary dismissal of parties' WaterFix claims and cross-claims.
2014, 2016, 2018	June 11, 2021	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.
	Oct. 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. 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.
	Feb. 22	Court issued order resetting pre-trial deadlines as proposed by the parties.
	Feb. 22	Metropolitan and SDCWA each filed motions for summary adjudication.



Cases	Date	Status
2014, 2016, 2018 (cont.)	April 13	Hearing on Metropolitan's and SDCWA's motions for summary adjudication.
	April 18	Parties filed supplemental briefs regarding their respective motions for summary adjudication, as directed by the court.
	April 18	Court issued order resetting pre-trial deadlines as proposed by the parties.
	April 29	Parties filed pre-trial briefs.
	April 29	Metropolitan filed motions in limine.
	May 4	Court issued order granting Metropolitan's motion for summary adjudication on cross-claim for declaratory relief that the conveyance facility owner, Metropolitan, determines fair compensation, including any offsetting benefits; and denying its motion on certain other cross-claims and an affirmative defense.
	May 11	Court issued order granting SDCWA's motion for summary adjudication on cross-claim for declaratory relief in the 2018 case regarding lawfulness of the Water Stewardship Rate's inclusion in the wheeling rate and transportation rates in 2019-2020; certain cross-claims and affirmative defenses on the ground that Metropolitan has a duty to charge no more than fair compensation, which includes reasonable credit for any offsetting benefits, with the court also stating that whether that duty arose and whether Metropolitan breached that duty are issues to be resolved at trial; affirmative defenses that SDCWA's claims are untimely and SDCWA has not satisfied claims presentation requirements; affirmative defense in the 2018 case that SDCWA has not satisfied contract dispute resolution requirements; claim, cross-claims, and affirmative defenses regarding applicability of Proposition 26, finding that Proposition 26 applies to Metropolitan's rates and charges, with the court also stating that whether Metropolitan violated Proposition 26 is a separate issue; and cross-claims and affirmative defenses regarding applicability of Government Code section 54999.7, finding that section 54999.7 applies to Metropolitan's rates. Court denied SDCWA's motion on certain other cross-claims and affirmative defenses.
	May 13	Pre-trial conference; court denied Metropolitan's motions in limine.
	May 16	Court issued order setting post-trial brief deadline and closing arguments.
	May 16-27	Trial occurred but did not conclude.
	May 23, June 21	SDCWA filed motions in limine.



Cases	Date	Status
2014, 2016, 2018 (cont.)	May 26, June 24	Court denied SDCWA's motions in limine.
	June 3, June 24, July 1	Trial continued, concluding on July 1.
	June 24	SDCWA filed motion for partial judgment.
	July 15	Metropolitan filed opposition to motion for partial judgment.
	Aug. 19	Post-trial briefs filed.
	Sept. 14	Court issued order granting in part and denying in part SDCWA's motion for partial judgment (granting motion as to Metropolitan's dispute resolution, waiver, and consent defenses; denying motion as to Metropolitan's reformation cross-claims and mistake of fact and law defenses; and deferring ruling on Metropolitan's cost causation cross-claim).
	Sept. 21	Metropolitan filed response to order granting in part and denying in part SDCWA's motion for partial judgment (requesting deletion of Background section portion relying on pleading allegations).
	Sept. 22	SDCWA filed objection to Metropolitan's response to order granting in part and denying in part SDCWA's motion for partial judgment.
	Sept. 27	Post-trial closing arguments.
	<u>Oct. 20</u>	<u>Court issued order that it will rule on SDCWA's motion for partial judgment as to Metropolitan's cost causation cross-claim simultaneously with the trial statement of decision.</u>
	Dec. 16	Parties' proposed trial statements of decision due.
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- (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
	DFEH Charge- (DFEH Number 202106-13819209)	203439	12/14/21	\$15,000
	DFEH Charge- (DFEH Number 202109-14694608)	203460	02/22	\$15,000



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	\$100,000
	Public Records Act Requests	203462	04/22	\$30,000
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP	FCC and Communications Matters	110227	11/10	\$100,000
Brown White & Osborn LLP	HR Matter	203450	03/22	\$50,000
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
Cummins & White, LLP	Board Advice	207941	05/22	\$10,000
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
<u>Greines, Martin, Stein & Richland LLP</u>	<u>SDCWA v. MWD</u>	<u>207958</u>	<u>10/22</u>	<u>\$100,000</u>



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
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	MOU Hearing Officer Appeal	201892	09/21	\$95,000
	MOU Hearing Officer Appeal	207943	05/22	\$25,000
	MOU Hearing Officer Appeal	207949	07/22	\$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
	Colorado River	203464	04/22	\$100,000
Internet Law Center	Cybersecurity and Privacy Advice and Representation	200478	04/13/21	\$100,000
	Systems Integrated, LLC v. MWD	201875	05/17/21	\$65,000
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



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Liebert Cassidy Whitmore	Labor and Employment	158032	02/17	\$201,444
	FLSA Audit	180199	02/19	\$50,000
Manatt, Phelps & Phillips	SDCWA v. MWD rate litigation	146627	06/16	\$4,400,000
	Raftelis - Subcontractor of Manatt, Phelps & Phillips Agreement No. 146627: Pursuant to 05/02/22 Engagement Letter between Manatt, Phelps & Phillips and Raftelis Financial Consultants, Inc., Metropolitan Water District paid Raftelis Financial Consultants, Inc.	Invoice No. 23949		\$56,376.64 for expert services and reimbursable expenses in SDCWA v. MWD
Meyers Nave Riback Silver & Wilson	OCWD v. Northrop Corporation	118445	07/11	\$2,300,000
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	\$900,000
	Arvin-Edison v. Dow Chemical	203452	01/22	\$90,000
	<u>Semitropic TCP Litigation</u>	<u>207954</u>	<u>09/22</u>	<u>\$75,000</u>
Nixon Peabody LLP*	Bond Counsel	193473	07/21	N/A
Norton Rose Fulbright US LLP*	Bond Counsel	200466	07/21	N/A
Olson Remcho LLP	Government Law	131968	07/14	\$200,000
	Executive Committee/Ad Hoc Committees Advice	207947	08/22	\$60,000
	Public Records Act	207950	08/22	\$20,000
Renne Public Law Group, LLP	ACE v. MWD (PERB Case No. LA-CE-1574-M)	203466	05/22	\$50,000
	MOU Hearing Officer Appeal	203948	07/22	\$25,000
Ryan & Associates	Leasing Issues	43714	06/01	\$200,000

Date of Report: November 2, 2022



Firm Name	Matter Name	Agreement No.	Effective Date	Contract Maximum
Seyfarth Shaw LLP	HR Litigation	185863	12/19	\$250,000
	Claim (Contract #201897)	201897	11/04/21	\$200,000
	Claim (Contract #203436)	203436	11/15/21	\$350,000
	Claim (Contract #203454)	203454	01/22	\$160,000
	Claim (Contract #203455)	203455	10/21	\$175,000
Sheppard Mullin Richter & Hampton LLP	Rivers v. MWD	207946	07/22	\$100,000
Stradling Yocca Carlson & Rauth*	Bond Counsel	200471	07/21	N/A
Theodora Oringher PC	OHL USA, Inc. v. MWD	185854	09/19	\$1,100,000
	Construction Contracts - General Conditions Update	185896	07/20	\$100,000
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

Date of Report: November 2, 2022

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

MINUTES

LEGAL AND CLAIMS COMMITTEE

September 13, 2022

Chair Dick called the teleconference meeting to order at 8:31 a.m.

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

Members absent: Director Atwater

Other Directors present: Chairwoman Gray, Directors Abdo, Ackerman, Blois, Cordero, De Jesus, Erdman, Faessel, Lefevre, McCoy, Miller, Morris, Peterson, and Pressman.

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 Scully reported on the sale of Metropolitan's Sunset Garage and the status of Metropolitan's federal government claim regarding a helicopter crash several years ago.

CONSENT CALENDAR ITEMS – ACTION

3. CONSENT CALENDAR OTHER ITEMS – ACTION

A. Approval of the Minutes of the Meeting of the Adjourned Legal and Claims Committee held August 16, 2022.

No comments on the minutes.

4. CONSENT CALENDAR ITEMS – ACTION

- 7-8** Subject: Approve amendments to the Administrative Code to establish reporting requirements to the Board on personnel-related settlements; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA
- Presented by: Henry Torres, Assistant General Counsel
- Motion: Approve recommended amendments to the Administrative Code.

The following Directors provided comments or asked questions:

1. Goldberg
2. Smith
3. Erdman

Director Record made a motion, seconded by Vice Chair Dennstedt, to approve the consent calendar consisting of items 3A and 7-8:

The vote was:

- Ayes: Directors Camacho, Dennstedt, Dick, Fellow, Goldberg, Phan, Record, Smith, Sutley, and Tamaribuchi
- Noes: None
- Abstentions: None
- Absent: Director Atwater

The motion for Items 3A and 7-8 passed by a vote of 10 ayes, 0 noes, 0 abstentions, and 1 absent.

END OF CONSENT CALENDAR ITEMS

5. OTHER BOARD ITEMS – ACTION

None

6. BOARD INFORMATION ITEMS

None

7. COMMITTEE ITEMS

7a Subject: General Counsel's Business Plan for Fiscal Year 2022-2023

Presented by: Marcia Scully, General Counsel

The General Counsel gave a presentation on this item.

The following Directors provided comments or asked questions:

1. Dick
2. Smith

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

None

Next meeting will be held on October 11, 2022.

Meeting adjourned at 9:16 a.m.

Larry Dick
Chair



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

10/11/2022 Board Meeting

7-10

Subject

Authorize a \$300,000 settlement of Metropolitan claims against the federal government for the recovery of costs resulting from damages to Metropolitan infrastructure due to the crash of a military helicopter; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel - potential litigation (1 case); may be heard in closed session pursuant to Gov. Code Section 54956.9(d)(4)]

Executive Summary

The Board previously authorized filing claims against the federal government in the amount of approximately \$315,000 to recover costs incurred as a result of damage to Metropolitan's infrastructure caused by a military helicopter crash near Parker Dam. This action is to authorize a settlement of those claims in the amount of \$300,000.

Details

At the December 2019 board meeting, the Board authorized filing claims with the federal government to recover the costs resulting from damages caused by a military helicopter striking Metropolitan's high-voltage transmission ground lines about 10 miles northwest of Gene and Intake Pumping Plants. As a result of the incident, Metropolitan had to make emergency repairs to damaged transmission ground lines, a transmission line conductor, and steel tower components. In addition, the crash caused a power outage at Iron Mountain Pumping Plant, resulting in approximately 50.2 acre-feet of water being spilled from the Colorado River Aqueduct.

Metropolitan filed claims under the Federal Tort Claims Act and the Military Claims Act in January 2020 in the amount of \$315,693.58. The claimed costs included the emergency contract with Henkels and McCoy, costs of Metropolitan labor used in making repairs, costs of materials used to make repairs, the cost of the spilled water, and other minor administrative costs. After submitting the claims, the federal government took over one year to investigate the claims. The first settlement offer was made in February 2022, in the amount of \$100,000. The federal government agreed that there was no dispute as to the cause of the incident, but they did dispute the contractor costs as excessive, and the cost of the water spilled. After multiple offers by the federal government, Metropolitan counteroffered with \$300,000, and it was accepted.

Policy

By Minute Item 51825 Authorized filing claims with the federal government for the recovery of damages to Metropolitan in the amount of approximately \$315,000 as set forth in Agenda Item 7-4 board letter.

Metropolitan Water District Administrative Code Section 6433: Authority to Litigate, Compromise and Settle Claims By and Against the District

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 (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because it involves continuing administrative activities, such as general policy and procedure making that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment (Section 15378(b)(2) of the State CEQA Guidelines. In addition, 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 of CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize a \$300,000 settlement of Metropolitan claims against the federal government for the recovery of costs resulting from damages to Metropolitan infrastructure due to the crash of a military helicopter.

Fiscal Impact: Metropolitan will recover \$300,000 in damages and will write off \$15,693.58.

Business Analysis: Settling the claims will avoid litigation costs and uncertainty associated with litigation.

Option #2


Do not authorize settlement and authorize initiating litigation to recover the full amount claimed.

Fiscal Impact: Metropolitan would forgo collecting \$300,000 and, if authorized by the Board, file a lawsuit to recover the full amount claimed of \$315,693.58 and incur additional costs to litigate.

Business Analysis: Uncertainty with litigation and costs associated with litigation could result in a net recovery of less than \$300,000.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

10/5/2022

Date

Ref# I12692777



Legal & Claims Committee

Authorize a \$300,000 Settlement of Metropolitan Claims against the Federal Government

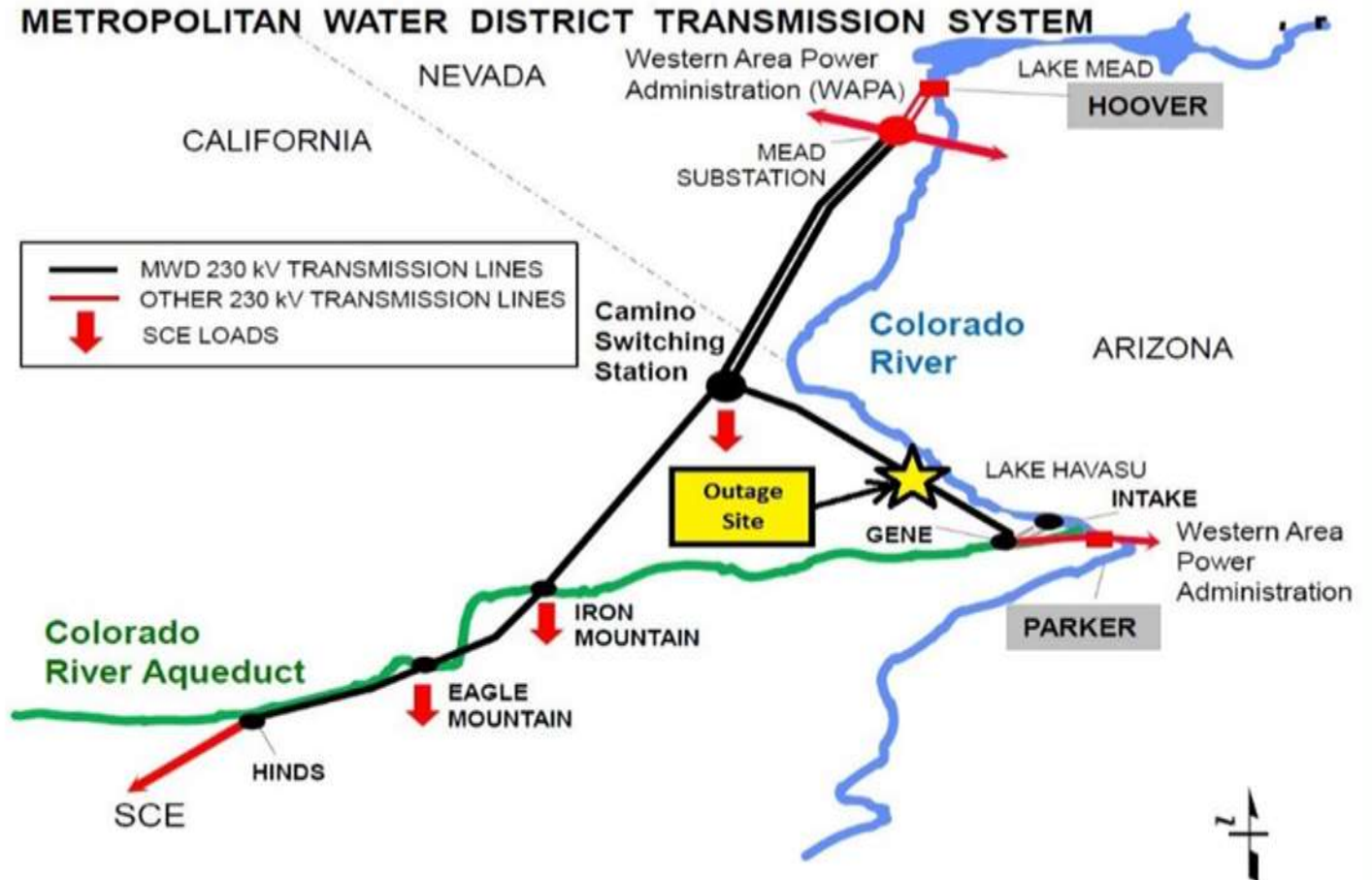
Item 7-10

October 11, 2022

Near Gene and Intake Pumping Plants



Helicopter Crash Incident 2018



Federal Tort
Claims Act.
Military
Claims Act.



Board Action December 2019

- Authorized filing claims against the federal government in the amount of approximately \$315,000
- January 2020, filed claims in the amount of \$315,693.58



Claimed Costs



Item	Cost Claimed
Contract Henkels and McCoy	\$166,962.70
Metropolitan Labor	\$96,461.39
Metropolitan Materials	\$17,210.91
Miscellaneous/ Administrative Costs	\$169.58
Water Spilled	\$34,889.00
Total	\$315,693.58

Board Options

- Option #1
Authorize a \$300,000 settlement of Metropolitan claims against the federal government for the recovery of costs resulting from damages to Metropolitan infrastructure due to the crash of a military helicopter.
- Option #2
Do not authorize settlement and authorize initiating litigation to recover the full amount claimed.

Staff Recommendation

Option #1

Authorize a \$300,000 settlement of Metropolitan claims against the federal government for the recovery of costs resulting from damages to Metropolitan infrastructure due to the crash of a military helicopter.



Questions



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

10/11/2022 Board Meeting

7-12

Subject

Approve amendments to the Administrative Code to comply with recommendations of the California State Auditor regarding reporting requirements to the Board of Directors on personnel-related settlements and the contracting authority of the Ethics Officer; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

On April 21, 2022, the California State Auditor (Auditor) issued a report containing findings and recommendations regarding a wide-ranging audit of Metropolitan's processes and procedures. The report includes recommendations specifically addressing the reporting of personnel-related settlements and provisions in the Administrative Code relating to the Ethics Officer. The Auditor established an October 2022 deadline for implementing these recommendations. The Board previously adopted proposed changes to the Administrative Code intended to comply with the recommendations of the Auditor. After review, it was determined that additional minor changes to the language are necessary to comply with the recommendations. The requested changes are set forth below.

Details

Background

In 2021, the California State Legislature directed California's State Auditor to conduct an audit of Metropolitan on a wide range of issues including the requirements for the General Manager and General Counsel to report to the Board the settlement of matters relating to Metropolitan personnel and additional changes relating to the authority of the Ethics Officer. The final report of the Auditor was issued on April 21, 2022. The report included recommendations for changes in Metropolitan's Administrative Code.

In response to the recommendations of the Auditor, staff proposed changes to the Administrative Code. The Board approved the proposed changes relating to the Ethics Officer on August 16, 2022 (Board letter 7-8) and those relating to the reporting requirements on September 13, 2022 (Board letter 7-8). Subsequently, the language was reviewed, and it was determined that minor additional changes are necessary to fully comply with the intent of the Auditor's recommendations. The changes are set forth below. Staff recommends adoption of the minor changes.

Recommendations Related to Personnel-Related Settlements

On September 13, the Board adopted changes to Sections 2720 and 2721 of the Administrative Code regarding the reporting of personnel-related settlements to the Board by the General Manager and General Counsel to read as follows:

1. General Manager's Quarterly Reports

§ 2720(d). General Manager's Quarterly Reports.

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, including all personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of

settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

The proposed amendment to Section 2720 to clarify the reporting of all personnel-related settlements and comply with the Auditor's intent is:

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, **and, in addition, any and all other** personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

2. General Counsel's Quarterly Reports

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, including all personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

The proposed amendment to Section 2721 to clarify the reporting of all personnel-related settlements and comply with the Auditor's intent is:

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, **and, in addition, any and all other** personnel-related settlements that invoke confidentiality or have any financial impact — including paid and reinstated leave — regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

Recommendations Related to Ethics Officer's Contracting Authority

In its August 16, 2022 action, the Board added a new Section 6471(a) to the Administrative Code to expressly authorize the Ethics Officer to obtain independent legal counsel as follows:

§ 6471. Authority to Obtain Professional Services.

- (a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period shall not exceed \$100,000.

The proposed amendment to clarify the autonomy of the Ethics Officer and comply with the Auditor's intent is:

§ 6471. Authority to Obtain Professional Services.

- (a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period

shall not exceed \$100,000. The General Counsel shall review such contracts solely for consistency with Metropolitan's contract requirements. The General Counsel shall not have the authority to deny the Ethics Officer's ability to contract with any given party.

Summary

This action authorizes amendments to the Administrative Code to comply with the Auditor's recommendations regarding the reporting of personnel-related settlements and to clarify the autonomy of the Ethics Officer to contract with outside law firms. See **Attachment 1** for a clean copy of the revised Administrative Code provisions, if this item is approved, and **Attachment 2** for the redlined text of the recommended amendments as compared to the recently adopted Administrative Code language.

Project Milestone

October 2022 – Deadline for addressing California State Auditor's recommendations

Policy

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 subject to CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the state CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Approve recommended amendments to the Administrative Code.

Fiscal Impact: None

Business Analysis: This option will address the California State Auditor's recommendations for reporting to the Board personnel-related settlements and the autonomy of the Ethics Officer to contract with outside law firms within the prescribed deadline.

Option #2


Do not approve recommended amendments to the Administrative Code.

Fiscal Impact: None

Business Analysis: This option will not comply with the California State Auditor's recommendations for amendments to Metropolitan's Administrative Code.

Staff Recommendation

Option #1


Marcia Scully
General Counsel

10/5/2022
Date

Attachment 1 – Administrative Code – Clean Excerpts 2720 2721 6471

Attachment 2 – Administrative Code – Redlined Excerpts 2720 2721 6471

Ref# I12683973

Proposed Amendment to Administrative Code Section 2720**§ 2720. General Manager's Quarterly Reports.**

The General Manager shall quarterly make the following reports:

(a) To the Engineering and Operations Committee: a report on the Capital Investment Plan, including service connections approved by the General Manager pursuant to Sections 4700-4708 with the estimated cost and approximate location of each and the execution of any relocation agreements involving an amount in excess of \$100,000 under authority of Section 8122(c);

(b) To the Finance and Insurance Committee:

A summary of financial performance including Comparative Statements of Operations and Comparative Balance Sheets and variances thereof from estimates;

(c) To the Real Property and Asset Management Committee:

(1) Deeds or grants accepted during the preceding quarter;

(2) Easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith;

(3) All leases made during the preceding quarter under the authority of Sections 8222, 8223, 8230 and 8232;

(4) The details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District; and

(5) Property sold pursuant to the authority granted by Section 8240 et seq.

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, and, in addition, any and all other personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

(e) To the Organization, Personnel and Technology Committee:

(1) The status of all information technology projects throughout the organization.

(2) The employment of any professional and technical consultant, the extension of any professional and technical consulting agreement, on the exercise of authority under Section 8121(c) and 8122(h) and the execution of any contract authorized pursuant to Section 8122(g) during the preceding calendar quarter. The report covering the last calendar quarter of the year may be combined with and included in the annual report. Each such report shall indicate when a consultant is a former employee of the District.

Section 2720 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; paragraphs (a) and (d) amended by M.I. 39036 - June 11, 1991; paragraphs (a)(4) and (b)(e) added by M.I. 39080 - July 9, 1991; paragraph (f) added by M.I. 39840 - September 15, 1992; paragraph (f) repealed by M.I. 40768 - April 12, 1994; paragraph (e) amended by M.I. 41389 - May 9, 1995; paragraph (c) amended by M.I. 41615 - October 10, 1995; paragraph (b) amended by M.I. 42193 - December 10, 1996; paragraphs (b)(6), and (d) amended by M.I. 43587 - June 8, 1999; paragraph (f) added by M.I. 43963 - April 11, 2000; paragraphs (a) and (a)(1) amended, paragraph (b) deleted, sub-paragraphs (4)-(6) renumbered, paragraphs (c)-(f) renumbered and amended by M. I. 44582 – August 20, 2001; original paragraph (4) repealed and paragraphs renumbered; new paragraph (6) amended; old paragraph (d) repealed and renumbered (e) and amended by M. I. 45943 – October 12, 2004; paragraphs(a)(2), (a)(3), (b), (c), and (d) amended by M. I. 46371 – September 13, 2005; paragraphs (a) –(e) amended and renumbered by M. I. 46983 - February 13, 2007; paragraph (2) deleted, former paragraphs (3-8) renumbered, paragraph (c) divided to create paragraph (1), paragraph (2) added by M.I. 47998 - August 18, 2009; paragraph (a) and (1) amended, new paragraph (2)-(4) added, paragraph (c), (1) and (2) deleted, former paragraph (d) renumbered as new paragraph (c), paragraph (e) deleted by M.I. 48081 – November 10, 2009; paragraph (b) amended by M.I. 48534 - January 11, 2011; paragraph (a)(1) amended, paragraphs (a)(2)-(a)(3) deleted, former paragraph (a)(4) renumbered, paragraph (c) added, former paragraph (b)(3)-(b)(7) renumbered, former paragraph (e) renumbered, new paragraph (e) added by M.I. 48800 – September 13, 2011; paragraph (a) amended, subparagraphs (a)(1) and (a)(2) deleted, subparagraph (b)(1) amended to remove number, subparagraph (b)(2) deleted, subparagraph (e)(1) amended, and subparagraph (e)(2) added by M.I. 50155 - June 9, 2015.

Proposed Amendment to Administrative Code Section 2721

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, and, in addition, any and all other personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

Section 2721 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; amended by M.I. 43587 - June 8, 1999; amended by M.I. 48800 – September 13, 2011.

(h) The Ethics Officer shall be the filing officer on behalf of the District to receive and file Statements of Economic Interest pursuant to the California Government Code and Section 7501 of this Administrative Code.

(i) The Ethics Officer shall have the authority to confer with the Chair of the Board and the Chair and Vice Chair of the Audit and Ethics Committee for the purpose of seeking advice and feedback on any policy and operational matters, or feedback on investigative matters, subject to the confidentiality requirements in section 7412 of the Administrative Code.

(j) The Ethics Officer shall have the authority to obtain, and have unrestricted access to all functions, documents, records, property, personnel and other information requested as part of an Ethics Office complaint or investigation without waiving any privileges that may apply.

M. I. 45285 - April 8, 2003; paragraph (e) deleted by M. I. 46338 - August 16, 2005; paragraph (e) added by M.I. 49648 - January 14, 2014; amended paragraphs (a), (b), (c) and (d), added paragraphs (e), (f) and (g), and renumbered former paragraph (e) to paragraph (h) and amended same by M.I. 51391 - November 6, 2018; amended paragraphs (e), (f), (g), and (h), and added new paragraph (i) by M.I. 52574 - November 9, 2021; amended paragraphs (c), (d), (g), and (i), and added new paragraph (j) by M.I. 52941- August 16, 2022.

§6471. Authority to Obtain Professional Services.

(a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period shall not exceed \$100,000. The General Counsel shall review such contracts solely for consistency with Metropolitan's contract requirements. The General Counsel shall not have the authority to deny the Ethics Officer's ability to contract with any given party.

(b) The Ethics Officer is authorized to employ the services of other professional or technical consultants for advice and assistance in performing the duties assigned as may be required or as deemed necessary, provided that the amount to be expended in fees, costs and expenses under any one contract in any one year shall not exceed \$50,000.

(c) The Ethics Officer shall inform the Audit and Ethics Committee whenever the authority granted under this section is exercised, and shall further report quarterly on activities concerning any agreements entered into under this section. Any such contracts shall be consistent with Metropolitan contract requirements and shall be reviewed by the General Counsel.

M. I. 45285 - April 8, 2003; amended by M. I. 46064 - January 11, 2005; amended by M.I. 46983 - February 13, 2007; amended by M. I. 47636 - September 9, 2008; renumbered from Section 6472 to 6471 and amended same by M.I. 51391 - November 6, 2018; added paragraph numbering to Section, added new paragraph (a) by M.I. 52941- August 16, 2022.

§6472. Reports to Audit and Ethics Committee.

(a) The Ethics Officer shall annually, in advance of the July Board meetings, submit to the Audit and Ethics Committee a business plan for the Ethics Office containing key priorities for the coming year for review and approval.

Proposed Amendment to Administrative Code Section 2720**§ 2720. General Manager's Quarterly Reports.**

The General Manager shall quarterly make the following reports:

(a) To the Engineering and Operations Committee: a report on the Capital Investment Plan, including service connections approved by the General Manager pursuant to Sections 4700-4708 with the estimated cost and approximate location of each and the execution of any relocation agreements involving an amount in excess of \$100,000 under authority of Section 8122(c);

(b) To the Finance and Insurance Committee:

A summary of financial performance including Comparative Statements of Operations and Comparative Balance Sheets and variances thereof from estimates;

(c) To the Real Property and Asset Management Committee:

(1) Deeds or grants accepted during the preceding quarter;

(2) Easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith;

(3) All leases made during the preceding quarter under the authority of Sections 8222, 8223, 8230 and 8232;

(4) The details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District; and

(5) Property sold pursuant to the authority granted by Section 8240 et seq.

(d) To the Legal and Claims Committee, jointly with the General Counsel, the exercise of any power delegated to them by Sections 6431, 6433 and 6434, and, in addition, any and all other ~~including all~~ personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

(e) To the Organization, Personnel and Technology Committee:

(1) The status of all information technology projects throughout the organization.

(2) The employment of any professional and technical consultant, the extension of any professional and technical consulting agreement, on the exercise of authority under Section 8121(c) and 8122(h) and the execution of any contract authorized pursuant to Section 8122(g) during the preceding calendar quarter. The report covering the last calendar quarter of the year may be combined with and included in the annual report. Each such report shall indicate when a consultant is a former employee of the District.

Section 2720 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; paragraphs (a) and (d) amended by M.I. 39036 - June 11, 1991; paragraphs (a)(4) and (b)(e) added by M.I. 39080 - July 9, 1991; paragraph (f) added by M.I. 39840 - September 15, 1992; paragraph (f) repealed by M.I. 40768 - April 12, 1994; paragraph (e) amended by M.I. 41389 - May 9, 1995; paragraph (c) amended by M.I. 41615 - October 10, 1995; paragraph (b) amended by M.I. 42193 - December 10, 1996; paragraphs (b)(6), and (d) amended by M.I. 43587 - June 8, 1999; paragraph (f) added by M.I. 43963 - April 11, 2000; paragraphs (a) and (a)(1) amended, paragraph (b) deleted, sub-paragraphs (4)-(6) renumbered, paragraphs (c)-(f) renumbered and amended by M. I. 44582 – August 20, 2001; original paragraph (4) repealed and paragraphs renumbered; new paragraph (6) amended; old paragraph (d) repealed and renumbered (e) and amended by M. I. 45943 – October 12, 2004; paragraphs(a)(2), (a)(3), (b), (c), and (d) amended by M. I. 46371 – September 13, 2005; paragraphs (a) –(e) amended and renumbered by M. I. 46983 - February 13, 2007; paragraph (2) deleted, former paragraphs (3-8) renumbered, paragraph (c) divided to create paragraph (1), paragraph (2) added by M.I. 47998 - August 18, 2009; paragraph (a) and (1) amended, new paragraph (2)-(4) added, paragraph (c), (1) and (2) deleted, former paragraph (d) renumbered as new paragraph (c), paragraph (e) deleted by M.I. 48081 – November 10, 2009; paragraph (b) amended by M.I. 48534 - January 11, 2011; paragraph (a)(1) amended, paragraphs (a)(2)-(a)(3) deleted, former paragraph (a)(4) renumbered, paragraph (c) added, former paragraph (b)(3)-(b)(7) renumbered, former paragraph (e) renumbered, new paragraph (e) added by M.I. 48800 – September 13, 2011; paragraph (a) amended, subparagraphs (a)(1) and (a)(2) deleted, subparagraph (b)(1) amended to remove number, subparagraph (b)(2) deleted, subparagraph (e)(1) amended, and subparagraph (e)(2) added by M.I. 50155 - June 9, 2015.

Proposed Amendment to Administrative Code Section 2721

§ 2721. General Counsel's Quarterly Reports.

The General Counsel shall quarterly report to the Legal and Claims Committee the exercise of any power delegated to the General Counsel by Sections 6431, 6433 and 6434, and, in addition, any and all other ~~including all~~ personnel-related settlements that invoke confidentiality or have any financial impact—including paid and reinstated leave—regardless of settlement type. The reporting on personnel-related settlements should include whether equal employment opportunity issues were implicated, whether the employee is still employed by the District, the existence and type of any financial or confidentiality terms, and whether the District has taken any corrective action in response to the alleged issues.

Section 2721 adopted by M.I. 36464 - January 13, 1987, effective April 1, 1987; amended by M.I. 43587 - June 8, 1999; amended by M.I. 48800 – September 13, 2011.

(h) The Ethics Officer shall be the filing officer on behalf of the District to receive and file Statements of Economic Interest pursuant to the California Government Code and Section 7501 of this Administrative Code.

(i) The Ethics Officer shall have the authority to confer with the Chair of the Board and the Chair and Vice Chair of the Audit and Ethics Committee for the purpose of seeking advice and feedback on any policy and operational matters, or feedback on investigative matters, subject to the confidentiality requirements in section 7412 of the Administrative Code.

(j) The Ethics Officer shall have the authority to obtain, and have unrestricted access to all functions, documents, records, property, personnel and other information requested as part of an Ethics Office complaint or investigation without waiving any privileges that may apply.

M. I. 45285 - April 8, 2003; paragraph (e) deleted by M. I. 46338 - August 16, 2005; paragraph (e) added by M.I. 49648 - January 14, 2014; amended paragraphs (a), (b), (c) and (d), added paragraphs (e), (f) and (g), and renumbered former paragraph (e) to paragraph (h) and amended same by M.I. 51391 - November 6, 2018; amended paragraphs (e), (f), (g), and (h), and added new paragraph (i) by M.I. 52574 - November 9, 2021; amended paragraphs (c), (d), (g), and (i), and added new paragraph (j) by M.I. 52941 - August 16, 2022.

§6471. Authority to Obtain Professional Services.

(a) The Ethics Officer is authorized to contract for independent legal counsel as he or she deems necessary in fulfilling duties and responsibilities of the Ethics Office. The Ethics Officer may contract with one or more attorneys or law firms depending on the areas of expertise needed. The amount to be expended in fees, costs and expenses under any one contract in any one-year period shall not exceed \$100,000. The General Counsel shall review such contracts solely for consistency with Metropolitan's contract requirements. The General Counsel shall not have the authority to deny the Ethics Officer's ability to contract with any given party.

(b) The Ethics Officer is authorized to employ the services of other professional or technical consultants for advice and assistance in performing the duties assigned as may be required or as deemed necessary, provided that the amount to be expended in fees, costs and expenses under any one contract in any one year shall not exceed \$50,000.

(c) The Ethics Officer shall inform the Audit and Ethics Committee whenever the authority granted under this section is exercised, and shall further report quarterly on activities concerning any agreements entered into under this section. Any such contracts shall be consistent with Metropolitan contract requirements and shall be reviewed by the General Counsel.

M. I. 45285 - April 8, 2003; amended by M. I. 46064 - January 11, 2005; amended by M.I. 46983 - February 13, 2007; amended by M. I. 47636 - September 9, 2008; renumbered from Section 6472 to 6471 and amended same by M.I. 51391 - November 6, 2018; added paragraph numbering to Section, added new paragraph (a) by M.I. 52941 - August 16, 2022.

§6472. Reports to Audit and Ethics Committee.

(a) The Ethics Officer shall annually, in advance of the July Board meetings, submit to the Audit and Ethics Committee a business plan for the Ethics Office containing key priorities for the coming year for review and approval.