



● **Board of Directors**
Organization, Personnel and Technology Committee

11/10/2020 Board Meeting

8-2

Subject

Authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not-to-exceed \$200,000 to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation, and related concerns; the General Manager has determined that the proposed actions are exempt or otherwise not subject to CEQA

Executive Summary

In response to public comments at Committee and Board meetings in recent months alleging systemic harassment and retaliation at Metropolitan, the Organization, Personnel and Technology Committee (OP&T Committee) held a special meeting on October 27, 2020 to hear from staff about Metropolitan's efforts to evaluate and address the concerns. The OP&T Committee approved a motion to add an action item to the November 10, 2020 Board agenda to consider and approve an independent review of Equal Employment Opportunity (EEO), Diversity, Equity, and Inclusion, and related concerns at Metropolitan as described in a letter submitted by Directors Sylvia Ballin, Adán Ortega, and Charles Treviño (**Attachment 1**). As requested, the Ethics Officer prepared this letter to facilitate consideration of this matter.

Details

Background

In public comments at Committee and Board meetings over the past several months, employees and employee associations expressed concerns about systemic workplace harassment, retaliation, and related issues at Metropolitan. At the October 27, 2020 OP&T Committee meeting, staff detailed various ongoing efforts by Metropolitan to evaluate and address the concerns:

1. Establishment of Diversity, Equity, and Inclusion Council and related outside consulting services

In the spring of 2020, the General Manager established the Diversity, Equity, and Inclusion Council (DE&I Council) comprised of representatives of bargaining units, employee resource groups, and management. The DE&I Council's stated purpose is development and consideration of ideas and policies for enhancing the work environment at Metropolitan in the areas of diversity, equity, and inclusion.

In October 2020, Metropolitan issued Request for Proposals (RFP) No. 1258 for outside consulting services to conduct a climate assessment and related analyses of diversity, equity, and inclusion issues at Metropolitan. The Scope of Services in the RFP was developed with input from DE&I Council members to assess areas they deemed appropriate. On a collaborative basis, the DE&I Council intends to guide the work of this consultant. Responses to this RFP were due on November 2, 2020. Assistant General Manager Shane Chapman gave a presentation about this scope of services at the October 27, 2020 OP&T Committee meeting.

2. External climate assessment administered by the General Counsel

On October 1, 2020, the General Counsel entered into Agreement No. 193454 with Van Dermyden Maddux Law Corporation (VMLC). Under this agreement, the firm would "conduct and administer a climate review to address allegations of EEO-based systemic discrimination, harassment, and retaliation brought forward by Metropolitan employees regarding but not limited to: (a) Metropolitan's Desert operations; and (b) Metropolitan's

apprenticeship program.” The scope of this agreement does not currently include review of specific cases or investigations. Assistant General Counsel Henry Torres gave a presentation about this agreement at the October 27, 2020 OP&T Committee meeting. The firm has begun work under the direction of the Legal Department and has begun submitting invoices. In addition to personnel from the Legal Department, the Human Resources Group Manager has been participating in meetings with VMLC mainly for background information regarding Metropolitan employees, facilities, and structure.

3. Ethics Office evaluation of Metropolitan’s EEO complaint policies and processes

In August 2020, Ethics Office staff began a review of Metropolitan’s policies and procedures for handling EEO complaints. Ethics Office staff gave a presentation on this review at the October 27, 2020 OP&T Committee meeting.

Motion at October 27, 2020 Committee meeting

Director Ballin made the following motion at the October 27, 2020 Committee meeting:

“I would like to make a motion to add an action item on the agenda for the OP&T Committee in November, for action recommended to the Board of Directors also in November, consistent with the memorandum that Directors Ortega, Treviño, and myself distributed to the Board yesterday, October 26.

We would like to move that the Board consider and approve in November 2020 a review of the DEI initiative, procedures in place to investigate workplace harassment, concerns about workplace retaliation as reflected in the Ethics Officer’s survey earlier this year, as well as by the employees, and any other related matters through an independent outside legal counsel, working with the Ethics Officer and the OP&T Committee, in a manner that protects confidentiality of the members of our workforce who are part of the review.

The results of the review will go to the OP&T Committee and the Board, with recommendations for policies and management actions that may be necessary.”

Director Camacho seconded the motion, and the OP&T Committee approved the motion unanimously. The memorandum referenced in Director Ballin’s motion is included as **Attachment 1**.

Proposed action item

Based on the recommendations in the aforementioned memorandum, director and employee comments at the October 27, 2020 OP&T Committee meeting, and staff’s comments about ongoing efforts by Metropolitan to evaluate and address these issues, the Ethics Officer has proposed this item for consideration as described below.

Option #1

This alternative would authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not to exceed \$200,000 to conduct an independent review of allegations of systemic EEO-related discrimination, harassment, and retaliation, and related concerns as described in **Attachment 1**.

Under this alternative, the scope of work would include examination of the elements identified in **Attachment 1**, summarized below:

- a. How EEO-related discrimination, harassment, and retaliation claims are handled by senior management, human resources staff, legal department, and other levels of management. Include examination of processes utilized in: (1) the case that was the subject of the General Manager’s October 20, 2020 communication to the Board of Directors; and (2) cases reported by claimants during meetings of Committee and Board members throughout 2020.
- b. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
- c. Degree of employees’ fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
- d. Compliance with best practices in these and related areas.

- e. Level of Board of Directors oversight of issues and concerns related to: (1) diversity, equity, and inclusion; (2) handling of EEO-related complaints; (3) fairness and favoritism in employment practices; (4) management accountability; (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

The Ethics Officer would direct the outside counsel's work without involvement of management or Office of the General Counsel personnel. Outside counsel would provide a confidential written report of findings and recommendations and present the report concurrently to the Ethics Officer and the OP&T Committee.

The Board of Directors would waive any limitation in the Administrative Code restricting the role of the Ethics Officer with regard to these matters or contrary to this action.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

Administrative Code, section 1300 (Board Governance Principles)

Administrative Code, section 1301 (Board Product)

Administrative Code, section 6470 (Ethics Officer; Powers and Duties)

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed actions are not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed actions will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involve continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed actions are not defined as a project under CEQA because they involve the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not to exceed \$200,000 to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation and related concerns.

Fiscal Impact: \$200,000 for consulting services.

Business Analysis: Committee's motion called for immediate consideration of this matter.

Option #2

Take no action.

Fiscal Impact: Not applicable.

Business Analysis: Defer subject matter of item.

Staff Recommendation

Option #1



Abel Salinas
Abel Salinas
Ethics Officer

11/6/2020

Date

Attachment 1 - Letter submitted by Directors Ballin, Ortega, and Treviño

Ref# e12680905

TO: Chairman John Murray, MWD OP&T Committee

Cc: Chairwoman Gloria Gray, Ethics Chairwoman Marsha Ramos; and members of the Board of Directors

FROM: MWD Directors Sylvia Ballin, Charles Trevino, Adán Ortega

SUBJECT: **Addressing Allegations of Systemic Workplace Harassment and Fear of Retaliation at MWD Through an Independent Review & Evaluation**

Over the past several months, the Board of Directors of the Metropolitan Water District of Southern California (MWD), has heard disturbing reports and statements alleging individual and systemic workplace harassment and fear of reprisals affecting our workforce. As former MWD employees who are now members of the Board of Directors, we have been asked to provide our opinions regarding steps that will assure the workforce that the Board of Directors takes their comments about systemic issues with the workplace environment seriously.

Metropolitan's Board Governance Principles require that the Board of Directors establish written policies to protect Metropolitan as an organization, including development of terms and conditions of employment and maintaining a safe and inclusive workplace environment. Administrative Code §1301. Duties of the OP&T Committee include oversight of relations between the District and its employees, and especially, equal employment opportunity, affirmative action and work rules pertaining to the health and safety of employees. Administrative Code §2481(c) and (d). Duties of the Audit and Ethics Committee include responsibility for the ethical conduct of the business of Metropolitan and oversight of investigations.

We believe that the board must act fast to assure all employees including management, that the Board will proceed in an objective manner to determine whether the facts behind the allegations of distrust and fear of reprisals for reporting workplace harassment, and conduct the of Diversity, Equity and Inclusion Council, may warrant action by the Board with regards to MWD policies and management. Thus, we propose the following areas of inquiry to be considered by the Organization, Personnel and Technology Committee in November, for recommended action by the Board of Directors on November 10, 2020:

Recommendation: Authorize the Ethics Officer to retain independent outside legal counsel to support the work of the OP&T Committee and conduct a confidential independent review of related programs and investigations including but not limited to the following areas of inquiry, with monthly reports on progress beginning in December's OP&T Committee meeting:

Ethics Office Employee Survey: The Ethics Officer recently reported the results of an MWD employee survey demonstrating that less than half of the respondents affirmatively responded to the following question: "I can disclose a suspected violation of any law, rule or regulation without fear of reprisal." We recommend that the independent legal counsel and Ethics Officer analyze the survey results to determine if details in the survey point to patterns in terms of the levels of the workforce that harbor high levels of fear over workplace reprisal for reporting wrongdoing.

DEI Council: Given the boycott of the Diversity, Equity and Inclusion Council announced by a caucus of MWD female employees, we recommend that the inquiry include confidential meetings with the individual members of the council to assess their understanding of their roles, their confidence in the Council's structure and mission; directives given by management to the participants collectively and individually (officially and unofficially); role of the general counsel's office; fairness in facilitation; and degree of focus in addressing issues relevant to the broader workforce, especially

as it pertains to issues found in the ethics survey addressing the fear of reprisals; as well as other questions as deemed appropriate by the independent outside counsel in consultation with the Ethics Officer.

Harassment Claims: We recommend that the inquiry include a confidential examination of how sexual and other workplace harassment claims are handled by senior management, human resources staff, district legal counsel, and managers at all levels and provide a report on the level to which best management, legal and human resources practices are met; as well as compliance with industry standards and the law. This should also include a focus on measures taken to protect LGBTQ complainants. We would specifically request examination of the process utilized in the case reported by the General Manager in his communication to the Board of Directors on October 20th, as well as those reported by the claimants themselves during meetings of the OP&T Committee and the Board throughout 2020, and any others that can help establish patterns of good or bad practices.

Other Related Activities: The review and inquiries may include any other related administrative, legal, and organizationally related activities being carried out by any and all departments of the district and their respective groups, sections, and teams, as carried out by any individual(s) in the line of management, related to diversity, equity and inclusion; anti-harassment trainings; and general employee relations.

Oversight by The Board: We would like to request an examination of board agendas, minutes, recordings of meetings as necessary of the Board of Directors, the OP&T, Legal & Claims, and the Audit & Ethics Committee to determine the level at which the Board is exercising proper oversight and implementation of policies addressing issues of Diversity, Equity, and Inclusion, including but not limited to the adequacy of policies and procedures dealing with complaints of harassment; fostering fairness and discouraging favoritism in employment and promotion practices; provisions for management accountability; as well as for fostering a safe environment for women, ethnic, racial minorities, and LGBTQ employees.

Role of the Ethics Officer: We recommend that the Ethics Officer be provided with a budget to oversee this matter and facilitate the work of the Committee, and be designated to be the support staff to facilitate the work of the Committee, as assisted by independent outside legal counsel. In order to ensure the complete impartiality and objectivity of the Committee and its work, no other member of management or General Counsel's office shall participate or be privy to the confidential work of the independent outside counsel, preparation of reports to the Committee regarding best management, legal and HR practices, degree of effectiveness and/or recommended policies; as well as reviews of the performance of senior management and district counsel, and recommended actions to address any deficiencies that are found.

Finally, we recommend that any limitations found in the administrative code restricting the role of the Ethics Officer with regards to these matters or to the contrary be hereby waived by the Board of Directors.

Sylvia Ballin
San Fernando
Former Employee

Charles Trevino
Upper San Gabriel Municipal
Water District
Former Employee

Adán Ortega
City of Fullerton
Former Employee