

WORKSHOP MEETING OF THE  
BOARD OF DIRECTORS WITH MET DIRECTORS  
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY  
18700 Ward Street, Board Room, Fountain Valley, California  
August 4, 2021, 8:30 a.m.

Due to the spread of COVID-19 and as authorized by the Governor's Executive Order, MWDOC will be holding this meeting **BOTH in person at the District offices (masks are required for in-person attendance), and also by Zoom Webinar** and will be available by either computer or telephone audio as follows:

Computer Audio: You can join the Zoom meeting by clicking on the following link:

<https://zoom.us/j/8828665300>

Telephone Audio: (669) 900 9128 fees may apply  
(877) 853 5247 Toll-free  
Webinar ID: 882 866 5300#

## AGENDA

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### PLEDGE OF ALLEGIANCE

### ROLL CALL

### PUBLIC PARTICIPATION/COMMENTS

At this time members of the public will be given an opportunity to address the Board concerning items within the subject matter jurisdiction of the Board. Members of the public may also address the Board about a particular Agenda item at the time it is considered by the Board and before action is taken.

The Board requests, but does not require, that members of the public who want to address the Board complete a voluntary "Request to be Heard" form available from the Board Secretary prior to the meeting.

### ITEMS RECEIVED TOO LATE TO BE AGENDIZED

Determine need and take action to agendize item(s), which arose subsequent to the posting of the Agenda. (ROLL CALL VOTE: Adoption of this recommendation requires a two-thirds vote of the Board members present or, if less than two-thirds of the Board members are present a unanimous vote.)

### ITEMS DISTRIBUTED TO THE BOARD LESS THAN 72 HOURS PRIOR TO MEETING

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection in the lobby of the District's business office located at 18700 Ward Street, Fountain Valley, California 92708, during regular business hours. When practical, these public records will also be made available on the District's Internet Web site, accessible at <http://www.mwdoc.com>.

**NEXT RESOLUTION NO. 2115**

### PRESENTATION/DISCUSSION ITEMS

#### 1. LEGISLATIVE ACTIVITIES

- a. Federal Legislative Report (NRR)
- b. State Legislative Report (BBK)
- c. MWDOC Legislative Matrix
- d. Metropolitan Legislative Matrix

*Recommendation: Review and discuss the information presented.*

**2. INPUT OR QUESTIONS ON MET ISSUES FROM THE MEMBER AGENCIES/MET DIRECTOR REPORTS REGARDING MET COMMITTEE PARTICIPATION**

*Recommendation: Receive input and discuss the information presented.*

**3. INTRODUCTION OF AND CONVERSATION WITH THE NEW MET GENERAL MANAGER ADEL HAGEKHALIL**

*Recommendation: Review and discuss the information presented.*

**INFORMATION ITEMS**

**4. MET ITEMS CRITICAL TO ORANGE COUNTY** (The following items are for informational purposes only – a write up on each item is included in the packet. Discussion is not necessary unless requested by a Director)

- a. MET's Finance and Rate Issues
- b. MET'S Review of Equal Employment Opportunity Policies and Practices
- c. MET's Integrated Resources Plan Update
- d. MET's Water Supply Conditions
- e. Colorado River Issues
- f. Delta Conveyance Activities and State Water Project Issues

*Recommendation: Review and discuss the information presented.*

**5. METROPOLITAN (MET) BOARD AND COMMITTEE AGENDA DISCUSSION ITEMS**

- a. Summary regarding July MET Board Meeting
- b. Review items of significance for MET Board and Committee Agendas

*Recommendation: Review and discuss the information presented.*

**ADJOURNMENT**

Note: Accommodations for the Disabled. Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning Maribeth Goldsby, District Secretary, at (714) 963-3058, or writing to Municipal Water District of Orange County at P.O. Box 20895, Fountain Valley, CA 92728. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that District staff may discuss appropriate arrangements. Persons requesting a disability-related accommodations should make the request with adequate time before the meeting for the District to provide the requested accommodations.

The logo for "NATURAL RESOURCE RESULTS" features the words "NATURAL RESOURCE" in a blue sans-serif font above the word "RESULTS" in a larger, bold blue sans-serif font. A stylized green and blue wave graphic is positioned between the two lines of text.

**To:** Board of Directors, *Municipal Water District of Orange County*

**From:** Natural Resource Results

**RE:** Monthly Board Report – August 2021

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### **Appropriations**

Last week, the House passed a “minibus” of seven of the twelve appropriations bills which will provide funding for the Bureau of Reclamation and the EPA. Highlights for both agencies can be found below:

#### *Bureau of Reclamation*

- \$50 million to implement the Colorado River Drought Contingency Plan
- \$67 million for the WIIN Act Storage Account
- \$6 million for WIIN Act desalination projects
- \$75 million for WaterSMART
- \$33 million for CALFED
- \$15.5 million for desalination and water purification research program
- \$63.7 million for Title XVI

At the time of this report, the Bureau of Reclamation has not formally transmitted a WIIN Act funding request to Congress, which means it is still not clear how much funding the Administration is seeking for Doheny.

#### *EPA*

- \$72 million for WIFIA
- \$32 million for the priority actions in the PFAS Action Plan
- \$4 million to study advanced aquifer recharge in conjunction with USGS

The report accompanying the bill also included the following language directed at EPA: *“The Committee urges the Agency to act expeditiously in setting drinking water standards for PFAS and in designating PFAS as a hazardous substance under CERCLA. Substantial additional resources have been provided across accounts and program offices to support these efforts.”*

The Senate is behind the House in the appropriations process and has not released the text of any of its twelve appropriations bills and has not scheduled any mark ups. We expect them to do so soon.

### **WEROC EOC Funding**

We are pleased to report that both Senators Feinstein and Padilla included the WEROC EOC in their list of congressionally direct spending (earmark) requests that they submitted to the Senate Appropriations Committee. At this time, it is unclear whether the project will be included in the Homeland Security appropriations bill due to the fact that the Senate has not released the text of any of its appropriations bills yet.

The WEROC EOC was not included in the Homeland Security bill on the House side. A congressionally directed spending request was not submitted as Congresswoman Porter remains opposed to congressionally directed spending and the project is located in her district. We are working diligently with both Senate offices to ensure this does not impact our chances of success.

At this point, it is almost a given that Congress will have to pass a continuing resolution to avoid a government shutdown at the end of the fiscal year (September 30<sup>th</sup>). That means that it is unlikely that funding will be available for the WEROC EOC until late fall or early winter in the event the project is included in the appropriations bills.

### **Infrastructure Negotiations**

The bipartisan group of Senators tasked with negotiating an infrastructure deal notched big victory last week by reaching agreement on an infrastructure bill. This was followed by a procedural vote on the Senate floor to move forward with the legislation. Final passage of the bill could occur next week, but the timing is fluid. Legislative text is not currently available but western water highlights can be found below. A broader summary of the package is attached to this memo.

- \$1.15 billion for water storage, groundwater storage, and conveyance
  - \$100 million carve out for small surface and groundwater storage
- \$3.2 billion for BoR aging infrastructure
  - \$100 million for reserved or transferred works that have suffered critical failure
  - \$100 million for rehabilitation, reconstruction or replacement of a dam
- \$1 billion for water recycling
  - \$550 million for projects authorized by Congress or have received competitive grant funding through the WIIN Act
  - \$450 million for large scale water recycling projects
- \$250 million for desalination
- \$500 million for safety of dams
- \$400 million for WaterSMART
  - \$100 million for nature-based projects
- \$300 million to implement Colorado River Drought Contingency Plan
  - \$50 million for upper basin
- \$100 million for cooperative watershed management projects
- \$250 million for aquatic ecosystem restoration projects
- \$100 million for multi-benefit projects to improve watershed health

- \$50 million for endangered species recovery and conservation programs in the Colorado River Basin

It is important to note that this funding highlighted above is real money, meaning they are appropriated dollars and not funding authorizations.

The infrastructure package will also include the text of S. 914, the Drinking Water and Wastewater Infrastructure Act of 2021. Over a five-year period, this bipartisan bill authorizes:

- \$14.7 billion for the Drinking Water State Revolving Funding
- \$14.7 billion for the Clean Water State Revolving Fund
- \$250 million for WIFIA
- \$500 million for EPA's lead reduction projects grant program

#### **Water Conservation Rebate Tax Parity Act**

Last week, Senators Feinstein and Padilla, along with Congressman Huffman and Congresswoman Chu, introduced the Water Conservation Rebate Tax Parity Act. This is a MWDOC endorsed piece of legislation that would exclude water conservation and stormwater management rebates from the category of taxable income under Internal Revenue Code Section 136.

# **Bipartisan *Infrastructure Investment and Jobs Act* Summary**

A Road to Stronger Economic Growth

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## Topline Summary

- Historic investment in the nation's core infrastructure priorities— including roads and bridges, rail, transit, ports, airports, water systems, and broadband.
- No tax hikes on everyday Americans.
- Includes bipartisan Senate-passed *Drinking Water and Wastewater Infrastructure Act* and bipartisan committee-passed surface transportation reauthorization bills from the Commerce Committee and the Environment and Public Works Committee along with the *Energy Infrastructure Act* approved by the Energy and Natural Resources Committee
- Improves permitting by including enhancements to FAST-41, which has substantially reduced the permitting timeline for larger infrastructure projects.
- Includes rural infrastructure development and dedicated new funds for major projects.
- Long-term spending for capital assets that will improve economic efficiency, productivity, GDP and revenue, and will not increase inflation.
- New spending paid for with CBO/JCT scores, CBO estimates & OMB estimates.

### \$550 Billion In New Spending Over 5 Years

**Roads, Bridges, & Major Projects: \$110B above baseline** - Includes Commerce and EPW-passed surface transportation reauthorization bills. Funds new, dedicated grant program to replace and repair bridges and increases funding for the major project competitive grant programs. At the same time, the package preserves the tradition of significant federal highway aid to states.

**Passenger and Freight Rail: \$66B** - Provides funding for the Amtrak National Network, expands intercity passenger rail and dedicates funding to the Northeast Corridor, which has incurred a severe repair backlog after Hurricane Sandy. Increases funding for freight rail and safety at rail-highway grade crossings.

**Safety: \$11B** - Funds highway & pedestrian safety programs, including a significant investment in Safe Streets program that prevent death and serious injury on roads and streets.

**Public Transit: \$39.2B** - Funds nation's transit system repair backlog, which DOT estimates is more than 24,000 buses, 5,000 rail cars, 200 stations, and thousands of miles of track, signals, and power systems.

**Broadband: \$65B** - Grants to states for broadband deployment, supports broadband affordability expands eligible private activity bond projects to include broadband infrastructure, and supports middle-mile deployment efforts.

**Ports and Waterways: \$17.3B** - Funding for waterway and coastal infrastructure, inland waterway improvements, port infrastructure, and land ports of entry through the Army Corps, DOT, Coast Guard, GSA, and DHS.

**Airports: \$25B** - Increases funds for Airport Improvement grant program for runways, gates, & taxiways as well as a new Airport Terminal Improvement program for terminals, concessions, and multimodal connections. Improves Air Traffic Control infrastructure.

**Water Infrastructure: \$55B** - Includes \$23.4B for the bipartisan Drinking Water and Wastewater Infrastructure Act. Provides additional funding to address PFAS and for lead remediation. Supports water infrastructure in Tribal communities by providing \$1.8 billion for the Indian Health Service Sanitation Facilities Construction program, in addition to funding to complete all currently-authorized Indian Water Rights Settlements.

**Power and Grid: \$73B** - Includes the bipartisan Energy Infrastructure Act, which includes funds for grid reliability and resiliency; critical minerals and supply chains for clean energy technology; critical energy technologies like carbon capture, hydrogen, direct air capture, and energy efficiency; and energy demonstration projects from the bipartisan Energy Act of 2020. It also includes the 48C Advanced Manufacturing Tax Credit.

**Resiliency: \$46B** - Funding for cybersecurity to address critical infrastructure needs, waste management, flood mitigation, wildfire, drought, and coastal resiliency, ecosystem restoration, and weatherization.

**Low-Carbon and Zero-Emission School Buses & Ferries: \$7.5B** - Increases funding for the EPW's Electric Vehicle Charging and Fueling grant program, designed to strategically deploy EV, hydrogen fueling infrastructure, propane fueling infrastructure, and natural gas fueling infrastructure. Includes a state formula program for EV charging infrastructure deployment.

**EV and Low-Carbon School Buses & Ferries: \$7.5B** - Funds the production and procurement of electric vehicle and low carbon school buses and ferries, to include hydrogen fuel cells, liquefied natural gas, and other alternative fuel technologies.

## New Spending Pay-Fors

- \$205 billion from repurposing of certain unused COVID relief dollars (Source: CBO score & CBO estimate)
- Funding from recouping fraudulently-paid benefits from enhanced federal UI supplement (Awaiting CBO Letter)
- \$49 billion from delaying Medicare Part D rebate rule (Source: CBO score)
- \$53 billion from certain states returning unused enhanced federal UI supplement (Source: CBO estimate)
- \$20 billion from sales of future spectrum auctions (Source: CBO score) and \$67 billion from proceeds of the February 2021 c-band auction (Source: CBO estimate)
- \$56 billion in economic growth resulting from a 33 percent return on investment in these long-term infrastructure projects (Source: CBO analysis)
- \$28 billion from applying information reporting requirements to cryptocurrency (JCT score)
- \$21 billion from extending fees on GSEs (Source: CBO Score)
- \$13 billion from reinstating certain Superfund fees (Source: JCT score)
- \$8.7 billion from the mandatory sequester (Source: CBO score)
- \$6 billion from extending customs user fees (Source: CBO score)
- \$6 billion in sales from the Strategic Petroleum Reserve (Source: CBO score)
- \$3 billion in savings from reducing Medicare spending on discarded medications from large, single-use drug vials (Source: CBO Score)
- \$2.9 billion from extending available interest rate smoothing options for defined benefit pension plans (Source: CBO Score)

## Survey Data: Americans Overwhelmingly Support Fixing Our Nation's Infrastructure

- The overwhelming majority of Americans – about 8 in 10 – favor plans to increase funding for roads, bridges and ports and for pipes that supply drinking water, according to a [survey conducted by Associated Press-NORC Center for Public Affairs Research](#). (Poll conducted July 15-19, 2021)
- A [CBNC poll](#) conducted in late April indicated 87% of the public backs bipartisan efforts to fix our roads and bridges.
- A [CBS News/You Gov](#) survey found that 87% of Americans support more federal spending on building and repairing roads and bridges. 59% of respondents in the same survey said they support the Bipartisan Infrastructure Agreement. (Poll conducted July 14-17, 2021)
- According to a Yahoo News YouGov poll, [6 in 10 Republican voters say they favor the new \\$1.2 trillion infrastructure package](#) negotiated by a bipartisan group of senators and endorsed by the Biden White House. (Poll conducted June 22-24, 2021)

## Roads, Bridges & Major Projects

**Summary:** The \$110 billion in new spending in this section of the bipartisan infrastructure agreement addresses the aging infrastructure needs of the nation's roads & bridges. This section also contains the authorizations as included in the bipartisan EPW committee-passed Surface Transportation Reauthorization Act and the Commerce committee-passed Surface Transportation Investment Act.

- **Increased Contract Authority – \$55.48B**
- **Supplemental appropriations – \$55.52B**
  - ***Bridge grant programs – \$36.735B***
    - This funding supports increased funding for the EPW Bridge Investment Program— a competitive grant program to assist the repair and replacement of deficient and outdated bridges and ease the national bridge repair backlog.
    - In addition to the competitive program, this funding also supports a bridge formula program to help support the \$125 billion bridge repair backlog (as estimated by the American Society of Civil Engineers).
  - ***Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grants – \$7.5B***
    - This funding will boost funding for the RAISE (formerly BUILD) grant program, which supports surface transportation projects of local and/or regional significance.
  - ***National Infrastructure Project Assistance grant program – \$5B***
    - This new program supports multi-modal, multi-jurisdictional projects of national or regional significance.
  - ***Infrastructure for Rebuilding America (INFRA) Grant Program – \$3.2B***
    - This funding supports an increase in baseline funding to the INFRA grant program, which supports highway and rail projects of regional and national economic significance.
  - ***Appalachian Development Highway System formula program – \$1.25B***
    - The Appalachian Development Highway System consists of a series of highway corridors connecting 13 Appalachian states, from New York to Alabama. The routes are designed as local and regional routes for improving economic development in the historically isolated region. This dedicated funding will help complete the ADHS and spur economic development in Appalachia.
  - ***Surface Transportation Private Activity Bonds – \$500M***
    - This plan increases the current cap on these bonds from \$15 billion to \$30 billion, as currently \$14.98 billion has been issued or allocated. This increase will allow

state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

- ***University Transportation Centers – \$95M***

- This funding supports the University Transportation Centers (UTC) Program, which advances the state-of-the-art in transportation research and technology.

- ***Culvert Removal, Replacement, and Restoration – \$1B***

- This new program will provide grants to states for the removal, replacement, and restoration of culverts to address flow of water through roads, bridges, railroad tracks, and trails.

## Passenger And Freight Rail

**Summary:** The U.S. rail network is central to the success of the American economy, carrying more than 1.8 billion tons of freight valued at more than \$830 billion annually, and over 32.5 million passengers on Intercity Rail Passenger Transportation services. The bipartisan infrastructure agreement provides \$66 billion in new spending to address the infrastructure needs of the US rail network. This section also includes the Commerce Committee-passed Surface Transportation Investment Act rail reauthorization.

- **Northeast Corridor grants - \$6B**
  - This funding will go toward procurement & deferred maintenance backlog that currently exists on Amtrak's Northeast Corridor between Washington and Boston. Several transit agencies operate over the corridor, including NJ Transit in New Jersey and the Southeastern Pennsylvania Transportation Authority (SEPTA) in Pennsylvania and Delaware.
- **Fed-State Partnership Intercity Passenger Rail - \$36B**
  - **Northeast Corridor Fed-State Partnership set-aside - \$24B**
    - This program provides funding for capital projects within the United States to repair, replace, or rehabilitate qualified railroad assets to reduce the state of good repair backlog and improve intercity passenger rail performance.
- **Amtrak National Network - \$16B**
  - The Amtrak National Network consists 15 long distance routes and 28 state supported routes, on behalf of 20 partners including 17 states. This funding will provide the rail network with updated station locations and modernization; safety investments including grade crossings, fencing and collision-prevention technology.
- **Consolidated Rail Infrastructure and Safety Improvement (CRISI) - \$5B**
  - This program funds projects that improve the safety, efficiency, and reliability of intercity passenger and freight rail. This program leverages private, state and local investments to support safety enhancements and general improvements to infrastructure for both intercity passenger and freight railroads.
- **Railroad Crossing Elimination Program - \$3B**
  - This competitive grant program provides funds for the elimination of hazards at railway-highway crossings.

- **Restoration and Enhancement Grants - \$50M**

- This program funds operating assistance grants for initiating, restoring, or enhancing intercity passenger rail transportation. Projects such as additional frequency of current service, offering of new on board services, establishing of a new service, extension of a current service are all eligible for these grants.

## Public Transit

**Summary:** This section of the bipartisan infrastructure agreement provides \$39.15 billion in new funding to address the infrastructure needs of the nation's public transit assets. This package includes an extension of FAST Act transit policy.

- **Increased Contract Authority - \$19.15 B**

- The transit title reflects an increase of 43% above baseline levels for contract authority, for \$69.9 billion over the next five years. When combined with the supplemental appropriations of this section, this package provides an 83% increase for transit funding compared to FAST Act levels.

- **State of Good Repair - \$4.75B**

- U.S. DOT has found that an estimated 40 percent of public transit buses and 23 percent of rail transit assets are in marginal or poor condition, with a significant backlog in deferred maintenance and replacement. State of Good Repair grants support maintenance, replacement, and rehabilitation projects. These activities help transit agencies maintain assets in a state of good repair and develop Transit Asset Management plans.

- **The Capital Investment Grants Program - \$8B**

- Capital Investment Grants support new and expanded commuter and light rail, bus, and ferry service. The program includes New Starts for the construction of new systems and expansion of existing systems, Small starts for new systems and expansion projects with capital costs less than \$300 million, Core Capacity for projects related to corridor development, and projects with combined system goals.

- **Enhances Mobility for Seniors & Disabilities - \$2B**

- The Enhances Mobility for Seniors & Disabilities program makes federal resources available to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. This program supports transportation services in all areas – large urbanized, small urbanized, and rural.

- **Low-No Program - \$5.25B**

- The Low-No Program provides funding to state and local governments for the purchase or lease of zero-emission and low-emission transit buses, including acquisition, construction, and leasing of required supporting facilities.



## Safety & Research

**Summary:** The bipartisan infrastructure agreement provides \$10.5 billion in new funding to address the safety requirements of our nation's infrastructure. This section also includes the Commerce Committee-passed Surface Transportation Investment Act safety reauthorization.

- **\$2.24B in increased contract authority for FMCSA and NHTSA**
  - **Federal Motor Carrier Safety Administration (FMCSA)**
    - FMCSA safety grants are available to state and local government agencies working on commercial motor vehicle safety activities and demonstrate a capacity to work with highway traffic safety stakeholders that focus on commercial motor vehicle safety and training issues, and other industry stakeholders.
  - **National Highway Traffic Safety Administration (NHTSA)**
    - NHTSA is charged with writing and enforcing Federal Motor Vehicle Safety Standards as well as regulations for motor vehicle theft resistance and fuel economy. NHTSA awards grants for occupant protection, state traffic safety information systems, impaired driving countermeasures, distracted driving, motorcyclist safety, state graduated driver licensing laws, and non-motorized safety.
- **\$8.27 in supplemental appropriations**
  - **Safe Streets for all - \$5B**
    - The Biden administration's Safe Streets for All program funds state and local "vision zero" plans and other improvements to reduce crashes and fatalities, especially for cyclists and pedestrians.
  - **SMART grant program - \$500M**
    - Complement to the Federal Pell Grant Program, the National Science and Mathematics Access to Retain Talent (SMART) Grants, awarded to third-, fourth-, and fifth-year undergraduates who are majoring in technical fields, critical foreign languages, or who are in a qualifying liberal arts program.
  - **NHTSA Highway Safety Programs – \$1.1B**
    - This program provides grants to states to improve driver behavior and safety
  - **FMCSA Motor Carrier Safety Assistance Program – \$467.5M**
    - The program supports State and local law enforcement agencies through funding to mitigate crashes and hazardous materials incidents involving commercial motor vehicles (CMVs).

- **High Priority Grant Program – \$200M**
  - This competitive grant program supports commercial vehicle safety plan activities, including data collection, public awareness campaigns, technology demonstration, and other safety related efforts.
- **PHMSA Modernization – \$1B**

## Airports

### Funding Table:

AIRPORTS	
\$20,000,000,000	Airside Projects (runways, taxiways, etc) and Terminal Projects
\$5,000,000,000	Air Traffic Control Infrastructure

**Summary:** This section of the bipartisan infrastructure agreement will address the aging infrastructure needs of the nation's airports and air traffic control (ATC) facilities.

- **Airside projects (Runways, taxiways, etc) & Terminal projects - \$20 billion total**
  - **Formula funding:** \$15 billion (\$3 billion / year) for grants for airports to use for Airport Improvement Program ("AIP") projects, such as runways and taxiways, terminal development projects, noise, multimodal, or airport-owned towers. This provides flexibility for airports to address their specific airside or landside needs. This funding is formula-driven and spread out over five years.
  - **Discretionary funding:** \$5 billion (\$1 billion / year) for the Airport Terminal Program, a discretionary grant program for terminal development and other landside projects spread out over 5 years. The language ensures that terminal projects at small hub airports, nonhub, and nonprimary airports will receive funding guaranteeing that communities of all sizes benefit.
- **ATC Infrastructure - \$5 billion**
  - **\$5 billion for FAA's Facilities and Equipment** which includes funding for FAA-owned ATC facilities, including FAA-owned contract towers. This funding is spread out over five years and subject to congressional approval each fiscal year.

## Ports/Waterways

### Funding Table:

PORTS-WATERWAYS	
\$5,150,000,000	Army Corps of Engineers Construction
\$4,000,000,000	Army Corps of Engineers Operations and Maintenance
\$300,000,000	Army Corps of Engineers Mississippi River and Tributary
\$100,000,000	Army Corps of Engineers General Expenses/Regulatory Needs
\$2,250,000,000	DOT Port Infrastructure Development Program
\$25,000,000	DOT Marine Highways Program
\$429,000,000	U.S. Coast Guard Unfunded Priority Infrastructure
\$3,850,000,000	GSA/CBP Land Ports of Entry Modernization and Construction
\$400,000,000	Reduction in Truck Emissions at Ports
\$912,000,000	Ferry Boat and Terminal Construction

### Section-by-Section:

\$9.55 billion for **Army Corps of Engineers** infrastructure priorities. This includes \$5.15 billion for construction projects to help address the huge backlog of authorized projects that have yet to receive funding. Included under Corps construction are specific funding set-asides for Navigation, Inland Waterways, Aquatic Ecosystem Restoration, Environmental Infrastructure, Continuing Authorities Program, Shore Protection, and Remote and Subsistence Harbor Projects. Within the \$4 billion for Corps Operations and Maintenance, which would be spent over a three-year period, there is funding for dredging Federal navigation projects and repairing damages to Corps Projects caused by natural disasters. Similarly, under the \$300 million for Corps Mississippi Rivers and Tributaries (MR&T) Projects, funding addresses emergencies for Corps projects caused by natural disasters. There is also \$200 million for Corps General Expenses and Regulatory Needs, which is split evenly between the Ports and Waterways and Flood Resiliency Working Groups.

\$455M per year for 5 years for Department of Transportation's **Port Infrastructure Development Program (PIDP)** and **Marine Highways Program (MHP)**. \$450M in funding a year for PIDP will allow significant improvements to improve port facilities on our coasts, rivers and Great Lakes. PIDP grants can improve port infrastructure, including intermodal connections, or reduce or eliminate pollutants and greenhouse gas emissions. MHP funds, \$5M a year for five years, will work to expand the use of America's navigable waters, working to expand marine highway service options and facilitate their further integration into the U.S. transportation system.

\$429M for **U.S. Coast Guard infrastructure priorities**. Building off the Coast Guard's unfunded priorities list, the bill contains funding for needed housing, family support and childcare facilities, as well as shore construction infrastructure and facility deficiency needs.

The bill contains \$3.85B to modernize and improve **Land Ports of Entry** at our nation's Northern and Southwest Border. The funds are split between General Services Administration (GSA) and Customs and Border Protection (CBP). The funds will allow GSA and CBP to execute construction and modernization at all ports on CBP's Five-Year Plan as well as those identified as a priority for upgrades. Port modernization improves border security while also improving the efficient flow of travel and trade across our land border. Funds are also included for port of entry paving projects, the acquisition of leased ports and Federal Motor Carrier Safety Administration facility needs.

\$80M per year for 5 years for **Reduction in Truck Emissions at Ports**. This program requires the Secretary of Transportation to coordinate and fund projects through competitive grants that reduce port-related emissions from idling trucks. This program comes from the recent EPW Surface Transportation Reauthorization that passed committee unanimously. Additionally, this section requires a study on how ports would benefit from electrification and emerging technologies that reduces truck emissions.

\$182.4M for 5 years (total \$912M) for **Ferry Boat and Terminal Construction**. Taken from the EPW Surface Transportation Reauthorization that passed the committee unanimously, this increases funding for the ferry boat program, which funds the construction of ferry boats and ferry terminal facilities.

# Broadband

**Summary:** 19 million Americans still lack access to high-speed internet. It is well past time to bridge America's digital divide and build a 21st century broadband infrastructure that will meet our country's needs not only today, but for years to come. The bipartisan infrastructure plan invests \$65 billion to address our nation's digital divide once and for all.

- **Grants to states for deployment: \$40 billion**

- This funding supports a formula-based grant program to states, territories and the District of Columbia for the purposes of broadband deployment. The program does not favor particular technologies or providers. Projects would have to meet a minimum download/upload build standard of 100/20 megabits per second.
- The funding includes 10% set-aside for high-cost areas and each state and territory receives an initial minimum allocation, a portion of which could be used for technical assistance and supporting or establishing a state broadband office.
- States would be required to have enforceable plans to address all of their unserved areas before they are able to fund deployment projects in underserved areas. After both unserved and underserved areas are addressed, states may use funds for anchor institution projects.

- **Private Activity Bonds (PABs): \$600 million**

- Based off the Rural Broadband Financing Flexibility Act (S.1676), a Hassan-Capito proposal, this provision allows states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.

- **Support for Rural Areas: \$2 billion**

- The provision includes supports for programs administered by the U.S. Department of Agriculture, including the ReConnect Program, that provide loans and grants (or a combination of loans and grants) to fund the construction, acquisition or improvement of facilities and equipment that provide broadband service in rural areas.

- **"Middle Mile"**

- This provision would create a state grant program for the construction, improvement or acquisition of middle-mile infrastructure. Eligible entities include telecommunications companies, technology companies, electric utilities, utility cooperative, etc. The "middle mile" refers to the installation of a dedicated line that transmits a signal to and from an internet Point of Presence. Competition of middle-mile routes is necessary to serve areas, reducing capital expenditures, and lowering operating costs.

- **Tribal Grants: \$2 billion**

- This provision will provide additional funding to the Tribal Broadband Connectivity Program, which was established by the December COVID-19 relief package and is administered by NTIA. Grants from this program will be made available to eligible Native American, Alaska Native and Native Hawaiian entities for broadband deployment as well as for digital inclusion, workforce development, telehealth and distance learning.

- **Inclusion: \$2.75 billion**

- Includes the Digital Equity Act. This legislation introduced by Senators Murray, Portman and King establishes two NTIA-administered grant programs (formula-based and competitive) to promote digital inclusion and equity for communities that lack the skills, technologies and support needed to take advantage of broadband connections. The legislation also tasks NTIA with evaluating digital inclusion projects and providing policymakers at the local, state and federal levels with detailed information about which projects are most effective.

- **Affordability**

- This provision would devote additional funds to the FCC's Emergency Broadband Benefit (EBB) program, which subsidizes broadband service for eligible households—defined as those that suffered income loss during the pandemic or meet other need-based criteria, such as eligibility for school lunch programs. This program is being renamed the Low-Income Broadband Benefit and the subsidy will be provided at a lower rate (down to \$30 from an original \$50 per month), to extend its longevity across the 5-year budget window.

## Power Infrastructure

(contains allocations from power, resilience, orphan wells/AML, western water, and water)

<i>Jurisdictional to ENR, included in ENR bill</i>			
	Authorized	To be funded	Notes
<b>Grid Infrastructure, Resiliency, and Reliability</b>	\$ 28,760,000,000	\$ 27,650,000,000	All from power infrastructure funding bucket. This includes \$12.5 billion in borrowing authority, which does not score at this level and will ultimately keep within our cap.
<b>Supply Chains for Clean Energy Technologies</b>	\$ 8,624,000,000	\$ 7,712,000,000	Predominately power infrastructure funding bucket, \$125 million from waste management. Not funding authorizations for out years or amendments from markup.
<b>Fuels and Technology Infrastructure Investments</b>	\$ 27,853,740,781	\$ 27,853,740,781	All from power infrastructure funding bucket.
<b>Orphan Wells and Abandoned Mine Land Reclamation</b>	\$ 19,000,000,000	\$ 16,000,000,000	All from orphan well/AML funding bucket. Not funding amendments from markup.
<b>Western Water</b>	\$ 8,300,000,000	\$ 8,300,000,000	Funding is \$5 billion from western water, \$1 billion from water, and \$2.3 billion from resilience.
<b>Resilience</b>	\$ 9,000,000,000	\$ 9,000,000,000	All from resilience funding bucket. Includes weatherization, ecosystem restoration, and wildfires.
<b>Legacy Roads</b>	\$ 250,000,000	\$ 250,000,000	
<b>Energy Act</b>	\$ 9,041,068,000	\$ 8,307,068,000	Not funding extended authorizations for out years.
<b>TOTAL ENR BILL</b>	\$ 110,828,808,781	\$ 105,072,808,781	

<i>Power Infrastructure Items, non-Jurisdictional to ENR, not included in ENR bill</i>			
	Authorized	To be funded	
<b>Hydropower</b>		\$ 1,600,000,000	Straight appropriations for existing programs.
<b>48C Tax Credit</b>	\$ 8,000,000,000	\$ 8,000,000,000	

<b>TOTAL EXPANDED POWER INFRASTRUCTURE WORKING GROUP</b>			
	Authorized	To be funded	
	\$ 118,828,808,781	\$ 114,672,808,781	

# Senate Energy and Natural Resources

## Energy Infrastructure Act Section-by-Section

### Title I—Grid Infrastructure and Resiliency

#### Subtitle A—Grid Infrastructure and Reliability

**Sec. 1001. Preventing outages and enhancing the resilience of the electric grid.** This section directs the Department of Energy (DOE) to establish a grant program to support activities that reduce the likelihood and consequence of impacts to the electric grid due to extreme weather, wildfire, and natural disaster. This section authorizes \$5,000,000,000 for the period of fiscal years (FY) 22-26.

**Sec. 1002. Hazard mitigation using disaster assistance.** This section amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to include wildfire within the hazard mitigation program.

**Sec. 1003. Electric grid reliability and resilience research, development, and demonstration.** This section establishes the “Program Upgrading Our Electric Grid Reliability and Resiliency” program to provide Federal financial assistance to demonstrate innovative approaches to transmission, storage, and distribution infrastructure to harden resilience and reliability and to demonstrate new approaches to enhance regional grid resilience, implemented through States by public and publicly regulated entities on a cost-shared basis. It also directs the Secretary to improve resilience, safety, and reliability and environmental protection in rural or remote areas and—in collaboration with Department of Homeland Security, the Federal Energy Regulatory Commission (FERC), and the North American Electric Reliability Corporation (NERC)—to develop a framework to assess the resilience of energy infrastructure. This section authorizes \$5,000,000,000 for the period of FY22-26 for the Energy Infrastructure Federal Financial Assistance program and \$1,000,000,000 for the period of FY22-26 for Rural or Remote Areas.

**Sec. 1004. Utility demand response.** This section requires State regulators to consider establishing rate mechanisms to allow utilities to recover the costs of promoting demand-response practices in order to encourage electrical utilities to promote the use of demand-response practices.

**Sec. 1005. Siting of interstate electric transmission facilities.** This section directs DOE to study capacity constraints and congestion when designating National Interest Electric Transmission Corridors (NIETC). It also adds more objective criteria to the list of considerations the Secretary of Energy uses to select and designate an NIETC. The section adds that the FERC may issue permits for construction or modification of certain interstate transmission facilities if a state commission withholds or denies an application seeking approval for the siting of such facilities. It also directs FERC to consider whether the transmission permit applicant has engaged

states and non-federal entities in good faith consultations and in a timely manner before exercising its backstop siting authority.

**Sec. 1006. Rulemaking to increase the effectiveness of interregional transmission planning.**

This section directs FERC to initiate a rulemaking to address the effectiveness of existing planning processes for interregional transmission projects, make changes to that process, and establish a cost allocation methodology that reflects the benefits provided by interregional transmissions solutions.

**Sec. 1007. Transmission facilitation program.** This section establishes a \$2,500,000,000 revolving loan fund to allow DOE to serve as an “anchor-tenant” for a new transmission line or an upgrade of an existing line. The section permits DOE to buy a certain portion of the planned capacity (not more than 50%), which it then may sell after determining that the transmission project has ensured financial viability. It also permits DOE to issue loans to or enter into public-private partnerships with eligible transmission projects. It also authorizes \$10,000,000 for each of FY22-26 to carry out the program.

**Sec. 1008. Deployment of technologies to enhance grid flexibility.** This section amends the Energy Independence and Security Act of 2007 to include Smart Grid investments that provide flexibility and help quickly rebalance the electrical system, facilitate the aggregation or integration of distributed energy resources, provide energy storage to meet fluctuating, provide voltage support, integrate intermittent generation sources, increase the network’s operational transfer capacity, and anticipate and mitigate impacts of extreme weather events or natural disasters on grid resilience. The section authorizes \$3,000,000,000 for the Smart Grid Investment Matching Grant Program.

**Sec. 1009. State energy security plans.** This section provides assistance for the creation of State Energy Security Plans that address all energy sources and potential hazards and provides a risk assessment and risk mitigation approach.

**Sec. 1010. State energy program.** This section authorizes \$500,000,000 for the period of FY22-26 for the State Energy Program. It also amends the Energy Policy and Conservation Act to require State Energy Conservation Plans to support transmission and distribution planning activities and to allow State Energy Conservation Plans to include programs that help reduce carbon emissions in the transportation sector and accelerate the use of alternative transportation fuels for, and the electrification of State government vehicles, fleet vehicles, taxis, and ridesharing services, mass transit, school buses, ferries, and privately owned passenger and medium- and heavy-duty vehicles.

**Sec. 1011. Power Marketing Administration transmission borrowing authority.** This section increases the Bonneville Power Administration’s (BPA) borrowing authority by \$10,000,000,000 to assist in the financing of the construction, acquisition, and replacement of the Federal Columbia River Power System. It also requires BPA to issue an updated financial plan that considers the projected and planned use and allocation of BPA’s borrowing authority across its mission responsibilities and requires BPA to engage with customers and stakeholders on its financial and cost management efforts.

**Sec. 1012. Study of codes and standards for use of energy storage systems across sectors.**

This section directs the Secretary of Energy to conduct a study of types and commercial applications of codes and standards applied to stationary and mobile energy storage systems as well as those that move between stationary and mobile applications such as EV batteries.

**Sec. 1013. Demonstration of electric vehicle battery second-life applications for grid services.**

This section directs the Secretary of Energy to establish a demonstration project for second-life applications of electric vehicle batteries as aggregated energy storage installations to provide services to the electric grid.

**Sec. 1014. Columbia Basin power management.** This section rebalances the Columbia River Treaty by upgrading transmission capacity between Canada and the Western and Southwestern United States and authorizes amounts equal to the aggregated amount of downstream power benefits that Canada is entitled to under the Columbia River Treaty (\$1,000,000,000). It also authorizes \$100,000,000 to rehabilitate and enhance water storage and hydroelectric capacity, and \$10,000,000 to study better coordination of water and power flows between British Columbia and the Pacific Northwest.

## **Subtitle B—Cybersecurity**

**Sec. 1101. Enhancing grid security through public-private partnerships.** This section requires the Secretary, in consultation with State regulatory authorities, industry, the Electric Reliability Organization, and other relevant federal agencies, to carry out a program to promote and advance the physical security and cybersecurity of electric utilities, with priority provided to utilities with fewer resources. This section also requires a report to Congress on improving the cybersecurity of electricity distribution systems.

**Sec. 1102. Energy Cyber Sense program.** This section establishes a voluntary Energy Cyber Sense program to test the cybersecurity of products and technologies intended for use in the bulk-power system.

**Sec. 1103. Incentives for advanced cybersecurity technology investment.** This section directs FERC to initiate a rulemaking to develop incentives that would encourage investment in cybersecurity technology and participation in cybersecurity threat information sharing programs.

**Sec. 1104. Rural and municipal utility advanced cybersecurity grant and technological assistance program.** This section directs the Secretary of Energy to establish the “Rural and Municipal Utility Advanced Cybersecurity Grant and Technical Assistance Program” to provide grants and technical assistance for utilities to detect, respond to, and recover from cybersecurity threats. This section authorizes \$250,000,000 for the period of FY22-26.

**Sec. 1105. Enhanced grid security.** This section creates a program to develop advanced cybersecurity applications and technologies for the energy sector, a program to enhance and test the emergency response capabilities of DOE, and a program to increase the functional preservation of electric grid operations or natural gas and oil operations in the face of threats and

hazards. This section authorizes \$250,000,000 for the period of FY22-26 for the Cybersecurity for the Energy Sector RD&D program, \$50,000,000 for the period of FY22-26 for the Energy Sector Operational Support for Cyberresilience Program, and \$50,000,000 for the period of FY22-26 for Modeling and Assessing Energy Infrastructure Risk.

**Sec. 1106. Cybersecurity Plan.** This section allows the Secretary of Energy to require that award recipients, funded under this Act, submit a cybersecurity plan that demonstrates the entity's cybersecurity maturity in the context of the project.

**Sec. 1107. Savings Provision.** This section establishes that nothing in the subtitle affects the authority of any other Federal department or agency.

## **Title II—Supply Chains for Clean Energy Technologies**

**Sec. 2001. Earth Mapping Resources Initiative.** This section codifies the Earth Mapping Resources Initiative to accelerate mapping efforts at the USGS and authorizes \$320,000,000 for the period of FY22-26 to complete an initial comprehensive national modern surface and subsurface mapping and data integration effort to better understand our domestic mineral resources.

**Sec. 2002. National Cooperative Geologic Mapping Program.** This section includes an abandoned mine land and mine waste geologic mapping component in the geologic mapping program to ensure mine waste is catalogued and characterized for the occurrence of critical minerals and extends the existing program through 2031.

**Sec. 2003. National Geological and Geophysical Data Preservation Program.** This section directs the National Geological and Geophysical Data Preservation Program to preserve samples to track geochemical signatures from critical minerals in order to provide for provenance tracking.

**Sec. 2004. USGS energy and minerals research facility.** This section authorizes \$167,000,000 in funding for a USGS research facility to support energy and minerals research.

**Sec. 2005. Rare earth elements demonstration facility.** This section authorizes \$140,000,000 for FY22 for the Department of Energy to demonstrate the feasibility of a full-scale integrated rare earth element extraction and separation facility and refinery to strengthen domestic clean energy supply chains and provide environmental benefits through the reuse and treatment of waste material.

**Sec. 2006. Critical minerals supply chains and reliability.** This section creates improvements to the Federal permitting process with respect to critical mineral production on Federal land.

**Sec. 2007. Battery processing and manufacturing.** This section establishes a "Battery Material Processing Grant Program" within DOE's Office of Fossil Energy to ensure the US has a viable battery materials processing industry. This section also establishes within the Office of Energy

Efficiency and Renewable Energy a battery manufacturing and recycling grant program to support and sustain a North American battery supply chain. This section also directs the Secretary to continue the Lithium-Ion Battery Recycling Prize and convene a task force on battery producer requirements. This section also establishes several programs within the Department of Energy (DOE) that would provide grants for battery recycling research, development and demonstration, States and units of local government to assist in the establishment or enhancement of State battery collection, recycling, and reprocessing programs and retailers that sell batteries for the implementation or establishment of a system to collect used batteries. This section authorizes \$3,000,000,000 for FY22-26 for battery material processing grants, \$3,000,000,000 for FY22-26 for battery manufacturing and recycling grants and \$10,000,000 for FY22 for the recycling prize and \$125,000,000 for the battery recycling programs at DOE.

**Sec. 2008. Electric drive vehicle battery recycling and second-life applications program.** This section would expand an existing program at the Department of Energy for research, development, and demonstration of electric vehicle battery recycling and second-life applications for vehicle batteries. This section authorizes \$200,000,000 for each of FY22-26.

**Sec. 2009. Advanced energy manufacturing and recycling grant program.** This section establishes a grant program focused on small- and medium-sized manufacturers to enable them to build new or retrofit existing manufacturing and industrial facilities to produce or recycle advanced energy products in communities where coal mines or coal power plants have closed. This section authorizes \$750,000,000 for the period of FY22-26.

**Sec. 2010. Critical minerals mining and recycling research.** This section establishes several initiatives to address supply chain resiliency. It establishes a critical mineral mining, recycling, and reclamation research and development grant program within the Department of Energy; establishes a Critical Minerals Subcommittee of the National Science and Technology Council to coordinate science and technology efforts on critical minerals including recycling and substitute materials; and establishes a Department of Energy grant program for pilot projects that process, recycle, or develop critical minerals. This section authorizes \$100,000,000 for the pilot project grant program for each of fiscal years 2021 through 2024.

**Sec. 2011. 21<sup>st</sup> Century Energy Workforce Advisory Board.** This section establishes a 21<sup>st</sup> century to support and develop a skilled energy workforce. The board would consist of between 10 and 15 members, at least one of whom would represent a labor organization.

### **Title III—Fuels and Technology Infrastructure Investments**

#### **Subtitle A—Carbon Capture, Utilization, and Storage, and Transportation Infrastructure**

**Sec. 3001. Findings.** This section expresses Congress' findings regarding the importance of carbon capture, utilization, storage and transport technologies and infrastructure to meeting emissions reductions goals.

**Sec. 3002. Carbon utilization program.** This section establishes a grant program for state and local governments to procure and use products derived from captured carbon oxides. It expands DOE's Carbon Utilization program objectives to include the development of standards and certifications to support commercialization of carbon oxide products. This section authorizes \$41,000,000 for FY22, \$65,250,000 for FY23, \$66,562,500 for FY24, \$67,940,625 for FY25, and \$69,387,656 for FY26.

**Sec. 3003. Carbon capture technology program.** This section expands DOE's Carbon Capture Technology program to include front-end engineering and design (FEED) for carbon dioxide transport infrastructure necessary to deploy CCUS technologies. This section authorizes \$100 million for FY22-26.

**Sec. 3004. Carbon dioxide transportation infrastructure finance and innovation.** This section establishes a CO2 Infrastructure Finance and Innovation Act (CIFIA) program, which will provide flexible, low-interest loans for CO2 transport infrastructure projects and grants for initial excess capacity on new infrastructure to facilitate future growth. CIFIA will help facilitate private sector investment in CO2 infrastructure. This section authorizes \$600,000,000 for FY22 and 23 and \$300,000,000 for each of FY 24-26.

**Sec. 3005. Carbon storage validation and testing.** This section expands DOE's Carbon Storage Validation and Testing program to include large-scale commercialization of new or expanded carbon sequestration projects and associated carbon dioxide transport infrastructure. This section authorizes \$2,500,000,000 for FY22-26 for the program.

**Sec. 3006. Secure geologic storage permitting.** This section provides funding for the permitting of wells for the geologic sequestration of carbon dioxide and creates a grant program for states to establish their own Class VI permitting programs to ensure rigorous and efficient CO2 geologic storage site permitting. This section authorizes \$75,000,000 for the period of FY22-26.

**Sec. 3007. Geologic carbon sequestration on the outer Continental Shelf.** This section allows the Department of the Interior to permit geologic carbon sequestration on the outer Continental Shelf.

**Sec. 3008. Carbon Removal.** This section authorize a program for projects that contribute to the development of four regional direct air capture hubs. This section authorizes \$3,500,000,000 for FY22-26 for direct air capture projects to establish the four regional hubs.

## **Subtitle B—Hydrogen Research and Development**

**Sec. 3101. Findings; purpose.** This section expresses Congress' findings on the importance of clean hydrogen in promoting energy security and resilience and outlines the need to accelerate research, development, demonstration, and deployment of hydrogen from clean energy sources.

**Sec. 3102. Definitions.** The section sets a definition for "clean hydrogen" and "hydrogen."

**Sec. 3103. Clean hydrogen research and development program.** This section re-establishes and expands the scope of DOE's hydrogen research and development program to advance cross-cutting R&D for purposes of demonstration and commercialization of clean hydrogen production, processing, delivery and end-use application technologies.

**Sec. 3104. Additional clean hydrogen programs.** This section establishes clean hydrogen programs at DOE, including:

- At least four regional clean hydrogen hubs to demonstrate the production, processing, delivery, storage, and end-use of clean hydrogen. This section authorizes \$8,000,000,000 for the period of FY22-26.
- The development of a national strategy and roadmap to facilitate a clean hydrogen economy.
- A clean hydrogen manufacturing and recycling program to support a clean hydrogen domestic supply chain. For this program, the section authorizes \$500,000,000 for the period of FY22-26.
- A demonstration, commercialization and deployment program intended to decrease the cost of clean hydrogen production from electrolyzers. For this program, the section authorizes \$1,000,000,000 for the period of FY22-26.
- The efficient execution of DOE's clean hydrogen program by instructing the National Energy Technology Laboratory, the National Renewable Energy Laboratory, and Idaho National to work in a crosscutting manner to carry out the new regional clean hydrogen hubs and clean hydrogen manufacturing and recycling programs.

**Sec. 3105. Clean Hydrogen Production Qualifications.** This section directs the Secretary, in consultation with the EPA Administrator and outside stakeholders, to develop an initial standard for the carbon intensity of clean hydrogen production from renewable fossil fuel with CCUS, nuclear, and other fuel sources, beginning at 2 kilograms carbon dioxide per kilogram hydrogen (kg-CO<sub>2</sub>/kg-H<sub>2</sub>), adjusted after five years, and accounting for technological and economic feasibility to be applied to the activities in this title.

### **Subtitle C—Nuclear Energy Infrastructure**

**Sec. 3201. Infrastructure planning for micro and small modular nuclear reactors.** This section requires the DOE to develop a report on the feasibility for using nuclear energy to meet resilience and carbon reduction goals for the Department.

**Sec. 3202. Property interests relating to certain projects and protection of information relating to certain agreements.** This section allows the DOE to transfer fee title or property interest acquired by the Secretary in relation to any project funded under the Advanced Reactor Demonstration Program and extends the confidentiality of intellectual property associated with the Advanced Demonstration Program from 5 years to 30 years.

**Sec. 3203. Civil nuclear credit program.** This section provides the DOE with the authority, in consultation with the heads of applicable Federal agencies, to establish a process to evaluate bids

through an auction process and select certified nuclear reactors to be allocated credits. This section authorizes \$6,000,000,000 for the period of fiscal years FY22-26.

### **Subtitle D—Hydropower**

**Sec. 3301. Hydroelectric production incentives.** This section authorizes \$125,000,000 for FY22 for hydroelectric production incentives until expended.

**Sec. 3302. Hydroelectric efficiency improvement incentives.** This section authorizes \$75,000,000 for FY22 for hydroelectric efficiency improvement incentives until expended.

**Sec. 3303. Maintaining and enhancing hydroelectricity incentives.** This section directs the Secretary of Energy to make incentive payments to the owners and operators of hydroelectric facilities for capital improvements related to maintaining and enhancing hydroelectricity generation by improving grid resiliency, improving dam safety, and environmental improvements. This section authorizes \$553,600,000 for FY22 until expended.

**Sec. 3304. Pumped storage hydropower wind and solar integration and system reliability initiative.** This section directs the Secretary to establish a demonstration project for a pumped storage hydropower project to facilitate the long-duration storage of intermittent renewable electricity. This section authorizes \$10,000,000 for the period of FY22-26.

**Sec. 3305. Authority for pumped storage hydropower development using multiple Bureau of Reclamation reservoirs.** This section creates a streamlined process under the Bureau of Reclamation for pumped storage hydropower development projects and clarifies that certain pumped storage projects using multiple BOR reservoirs shall proceed through BOR's permitting process, not through both the Federal Energy Regulatory Commission and Bureau of Reclamation processes.

**Sec. 3306. Limitations on issuance of certain leases of power privilege.** This section provides requirements for the Secretary of the Interior concerning the issuance of a lease of power privilege for a proposed pumped storage project in Washington State.

### **Subtitle E—Miscellaneous**

**Sec. 3401. Solar Energy Technologies on Current and Former Mine Land.** This section requires the DOE to create a report of the viability of siting solar energy on current and former mine land, including necessary interconnection, transmission siting, and the impact on local job creation.

**Sec. 3402. Clean energy demonstration program on current and former mine land.** This section establishes a program to demonstrate the technical and economic viability of carrying out clean energy projects on current and former mine land in a compatible manner with any existing operations. This section authorizes \$500,000,000 for the period of FY22-26.

**Sec. 3403. Leases, easements, and rights-of-way for energy and related purposes on the Outer Continental Shelf.** This section amends the Outer Continental Shelf Lands Act to permit offshore energy storage. This will provide flexibility for the incorporation of energy storage technologies into future offshore energy development, such as battery storage for offshore wind.

## **Title IV—Enabling Energy Infrastructure Investment and Data Collection**

### **Subtitle A—Department of Energy Loan Program**

**Sec. 4001. Department of Energy loan programs.** This section clarifies the reasonable prospect of repayment criteria for both the Title XVII Innovative Energy Loan Guarantee (Title XVII) Program and the Advanced Technology Vehicle Manufacturing (ATVM) Program. It also expands the eligibility of the Title XVII Program to include projects that increase the domestic supply of critical minerals and makes certain state energy financing entities eligible to apply for Title XVII loans. The section expands the eligibility of the ATVM program to include medium and heavy duty vehicles, trains, aircraft, maritime vessels, and hyperloop technology. This section also provides loan guarantees for certain Alaska natural gas transportation projects and systems.

### **Subtitle B—Energy Information Administration**

**Sec. 4101. Definitions.** This section provides definitions for the Energy Information Administration subtitle.

**Sec. 4102. Data collection in the electricity sector.** This section directs the EIA to create a dashboard relating to the operation of the bulk power system including hourly operating data, and a system to provide data on the operations of load-serving entities.

**Sec. 4103. Expansion of energy consumption surveys.** This section directs the EIA to expand the Manufacturing Energy Consumption Survey, the Commercial Building Energy Consumption Survey, and the Residential Energy Consumption Survey to obtain more comprehensive data and reduce the burden on survey respondents; report community-level economic and environmental impacts of energy supply; and improve the presentation and distribution of data.

**Sec. 4104. Data collection on electric vehicle integration with the electricity grids.** This section directs the EIA to expand data collection with respect to electric vehicle integration with the electricity grid.

**Sec. 4105. Plan for the modeling and forecasting of demand for minerals used in the energy sector.** This section directs the EIA to develop a plan in collaboration with USGS for the forecasting of demand for energy equipment, including equipment for energy production or storage purposes that uses minerals, such as lithium and cobalt, which are or potentially may be determined to be critical minerals.

**Sec. 4106. Expansion of international energy data.** This section directs the EIA to implement measures to expand and improve its international energy data resources in order to understand the production and use of energy in various countries, changing patterns of energy use internationally, the relative costs and environmental impacts of energy production and use internationally, and plans for or construction of major energy facilities or infrastructure.

**Sec. 4107. Plan for the National Energy Modeling System.** This section directs the EIA to develop a plan to update or further the capabilities of the National Energy Modeling System, including with respect to technologies identified for large-scale demonstration projects, such as carbon capture and hydrogen production.

**Sec. 4108. Report on costs of carbon abatement in the electricity sector.** This section directs the EIA to submit a report on the potential use of levelized cost of carbon abatement as a metric to compare system-level costs of technology options to reduce emissions, and a potential process to measure carbon dioxide emissions intensity per unit of output production.

**Sec. 4109. Harmonization of efforts and data.** This section directs the EIA to establish a system to harmonize data collection efforts with EPA and other relevant Federal agencies.

### **Subtitle C—Miscellaneous**

**Sec. 4201. Consideration of measures to promote greater electrification of the transportation sector.** This section directs states to consider measures to promote greater electrification of the transportation sector including the establishment of rates that promote affordable and equitable electric vehicle charging options, improve the customer experience associated with EV charging including reducing wait times, accelerate third-party investment in public electric vehicle charging, and appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.

**Sec. 4202. Office of Public Participation.** This section amends section 319 of the Federal Power Act regarding the Office of Public Participation. The section strikes provisions related to the Director of the Office of Public Participation's term and termination and updates the Director's pay scale. This section also strikes expired authorization provisions.

**Sec. 4203. Digital climate solutions report.** This section requires the Secretary to report on the use of digital tools and platforms, such as artificial intelligence, crowdsourcing, and other technologies, as climate solutions.

**Sec. 4204. Study and report by the Secretary of Energy on job loss and impacts on consumer energy costs due to the revocation of the permit for the Keystone XL pipeline.** This section requires the Secretary of Energy to complete a study and report on the job loss and impacts on consumer energy costs due to the revocation of the permit for the Keystone XL pipeline.

**Sec. 4205. Study on impact of electric vehicles.** This section requires the Secretary of Energy to conduct a study on the cradle to grave environmental impact of electric vehicles.

**Sec. 4206. Study on impact of forced labor in China on the electric vehicle supply chain.** This section requires the Secretary of Energy, in coordination with the Secretary of State, to study the impact of forced labor in China on the electric vehicle supply chain.

## **Title V—Energy Efficiency and Building Infrastructure**

### **Subtitle A—Residential and Commercial Energy Efficiency**

**Sec. 5001. Definitions.** This section provides definitions for the Residential and Commercial Energy Efficiency subtitle.

**Sec. 5002. Energy efficiency revolving loan fund capitalization grant program.** This section creates a revolving loan fund capitalization grant program within the State Energy Program for recipients to conduct commercial energy audits, residential energy audits, or energy upgrades or retrofits. This section authorizes \$250,000,000 for FY22.

**Sec. 5003. Energy auditor training grant program.** This section establishes a competitive grant program under which the Secretary shall award grants to eligible States to train individuals to conduct energy audits or surveys of commercial and residential buildings. This section authorizes \$40,000,000 for the period of FY22-26.

### **Subtitle B—Buildings**

**Sec. 5101. Cost-effective codes implementation for efficiency and resilience.** This section creates a grant program within the Building Technologies Office to enable sustained, cost-effective implementation of updated building energy codes. This section authorizes \$225,000,000 for the period of FY22-26.

**Sec. 5102. Building, training, and assessment centers.** This section provides grants to institutions of higher education to establish building training and assessment centers to educate and train building technicians and engineers on implementing modern building technologies. This section authorizes \$10,000,000 for FY22.

**Sec. 5103. Career skills training.** This section directs the Secretary to award grants to pay the Federal share of associated career skills training programs under which students concurrently receive classroom instruction and on-the-job training for the purpose of obtaining an industry-related certification to install energy efficient buildings technologies. This section authorizes \$10,000,000 for FY22.

**Sec. 5104. Commercial building energy consumption information sharing.** This section requires the EIA and EPA to agree to an information sharing agreement related to commercial building energy consumption data.

## **Subtitle C—Industrial Energy Efficiency**

### **Part 1—Industry**

**Sec. 5201. Future of industry program and industrial research and assessment centers.** This section provides funding for institution of higher education-based industrial research and assessment centers to identify opportunities for optimizing energy efficiency and environmental performance at manufacturing and other industrial facilities. This section also establishes a grant program to fund upgrades for small- and medium-sized manufacturers that have been recommended in an assessment from an IAC or CHP TAP. This section authorizes \$550,000,000 for the period of FY22-26.

**Sec. 5202. Sustainable manufacturing initiatives.** This section directs the Office of Energy Efficiency and Renewable Energy to provide technical assessments for manufacturers to maximize energy efficiency, prevent pollution, improve efficient use of water, conserve natural resources, and other goals determined by the Secretary.

### **Part II—Smart Manufacturing**

**Sec. 5211. Definitions.** This section provides definitions for the Smart Manufacturing subtitle.

**Sec. 5212. Leveraging existing agency programs to assist small and medium manufacturers.** This section requires the Secretary to include smart manufacturing technologies and practices within the scope of technologies covered by the industrial assessment centers of the Department of Energy.

**Sec. 5213. Leveraging smart manufacturing infrastructure at National Laboratories.** This section requires the Secretary to conduct a study on how the Department can increase access to existing high-performance computing resources in the National Laboratories, particularly for small and medium manufacturers.

**Sec. 5214. State manufacturing leadership.** This section establishes a program for the Secretary to provide funding to states to invest in smart manufacturing technologies. This section authorizes \$50,000,000 for the period of FY22-26.

**Sec. 5215. Report.** This section requires the Secretary to submit a report on the progress made in advancing smart manufacturing in the United States.

## **Subtitle D—Schools and Nonprofits**

**Sec. 5301. Grants for energy efficiency improvements and renewable energy improvements at public school facilities.** This section directs the Secretary to award competitive grants to make energy efficiency, renewable energy, and alternative fueled vehicle upgrades and improvements at public schools. This section authorizes \$500,000,000 for the period of FY22-26.

**Sec. 5302. Energy efficiency materials pilot program.** This section establishes a pilot program to award grants to provide nonprofit buildings with energy-efficiency materials. This section authorizes \$50,000,000 for the period of FY22-26.

### **Subtitle E—Miscellaneous**

**Sec. 5401. Weatherization assistance program.** This section authorizes \$3,500,000,000 for FY22 for the Weatherization Assistance Program.

**Sec. 5402. Energy efficiency and Conservation Block Grant Program.** This section authorizes \$550,000,000 for FY22 for the Energy Efficiency and Conservation Block Grant Program. This section also amends the Energy Independence and Security Act of 2007 to allow EECBG funding to be used in programs that finance energy efficiency and other clean energy capital investments, projects, loan programs, and performance contracting programs.

**Sec. 5403. Survey, analysis, and report on employment and demographics in the energy, energy efficiency, and motor vehicle sectors of the United States.** This section establishes an “Energy Jobs Council” to conduct a survey of employers in the energy, energy efficiency, and motor vehicles sectors and perform analysis of the figures and demographics in those sectors to be made publicly available. This section is simply codifying the United States Energy and Employment Report that DOE used to produce, which has been produced by the Energy Futures Initiative since 2017.

**Sec. 5404. Assisting Federal Facilities with Energy Conservation Technologies grant program.** This section authorizes \$250,000,000 for FY22 for the existing AFFECT grants that are distributed through the Federal Energy Management Program to provide grants to federal agencies that they can leverage with private capital to make energy and water efficiency upgrades to federal buildings.

**Sec. 5405. Rebates.** This section authorizes \$20,000,000 for the period of FY22-23 for the extended product system rebate program and the energy efficient transformer rebate program.

**Sec. 5406. Model guidance for combined heat and power systems and waste heat to power systems.** This section requires the Secretary of Energy and FERC to review existing rules and procedures relating to interconnection service and additional services throughout the United States for electric generation with nameplate capacity up to 150 megawatts connecting at either distribution or transmission voltage levels to identify barriers to the deployment of combined heat and power systems and waste heat to power systems.

## **Title VI—Methane Reduction Infrastructure**

**Sec. 6001. Orphaned well site plugging, remediation, and restoration.** This section authorizes \$4,707,000,000 for programs to plug, remediate, and reclaim orphaned wells on Federal, State, and Tribal lands.

## **Title VII Abandoned Mine Land Reclamation**

**Sec. 7001. Abandoned Mine Reclamation Fund authorization of appropriations.** This section authorizes \$11,293,000,000 in funds for the Abandoned Mine Land Reclamation Fund.

**Sec. 7002. Abandoned Mine Reclamation Fee.** This section adjusts the rates of the Abandoned Mine Reclamation Fee to 22.4 cents per ton of coal produced by surface coal mining, 9.6 cents per ton of coal produced by underground mining, and 6.4 cents per ton for lignite coal. This section also extends the fee until 2034.

**Sec. 7003. Amounts distributed from Abandoned Mine Reclamation Fund.** This section extends the dates that amounts are to be distributed until 2036.

**Sec. 7004. Abandoned hardrock mine reclamation.** This section establishes a new program within the Department of the Interior to inventory, assess, decommission, reclaim, respond to hazardous substance releases on, and remediate abandoned hardrock mine land. This section authorizes \$3,000,000,000, of which 50 percent is reserved for grants to States and Tribes and 50 percent is reserved for use on Federal land.

## **Title VIII—Natural Resources-Related Infrastructure, Wildfire Management, and Ecosystem Restoration**

**Sec. 8001. Forest Service Legacy Road and Trail Remediation Program.** This section authorizes \$250,000,000 for the Forest Service's Legacy Road and Trail program, which funds activities to restore fish passage in streams at road and trail crossings, decommission unauthorized, user-created roads, decommission temporary roads, and other activities.

**Sec. 8002. Study and report on feasibility of revegetating reclaimed mine sites.** This section requires the Director of the Office of Surface Mining Reclamation to submit a study on the feasibility of revegetating reclaimed mine sites.

**Sec. 8003. Wildfire risk reduction.** This section authorizes \$3,369,200,000 to the Department of the Interior and the Forest Service for wildfire risk reduction by providing funding for community wildfire defense grants, mechanical thinning, controlled burns, the Collaborative Forest Restoration Program, and firefighting resources.

**Sec. 8004. Ecosystem restoration.** This section authorizes \$2,130,000,000 for the Department of the Interior and the Forest Service to restore the ecological health of Federal lands and waters and of private lands, through voluntary efforts, via a variety of programs, including through partnering with States.

**Sec. 8005. GAO Study.** This section directs the Comptroller General of the United States to conduct a study on the implementation of this Title and whether it effectively reduced wildfire risk and restored ecosystems. This section authorizes \$800,000 for this study.

**Sec. 8006. Establishment of fuel breaks in forests and other wildland vegetation.** This section establishes a categorical exclusion for certain forest management activities from the requirements under the National Environmental Policy Act.

**Sec. 8007. Emergency actions.** This section allows the Secretary to designate certain situations as emergency situations and take authorized emergency actions in response.

## **Title IX—Western Water Infrastructure**

**Sec. 9001. Western water infrastructure.** This section authorizes \$8,300,000,000 for FY22-26 for Bureau of Reclamation western water infrastructure, including:

- \$3.2 billion for aging infrastructure,
- \$1.15 billion for water storage, groundwater storage and conveyance projects (includes \$100 million for small water storage),
- \$1 billion for water recycling and reuse projects (includes \$450 million for large water recycling projects),
- \$250 million for desalination projects,
- \$1 billion for rural water projects,
- \$500 million for dam safety projects,
- \$300 million for Drought Contingency Plan (includes \$50 million for Upper Basin States),
- \$400 million for waterSMART Water and Energy Efficiency Grants (includes \$100 million for natural infrastructure projects),
- \$100 million for the Cooperative Watershed Management Program,
- \$250 million for Aquatic Ecosystem Restoration Program,
- \$100 million for multi-benefit watershed projects, and
- \$50 million for Colorado River fish species recovery programs.

**Sec. 9002. Water storage, groundwater storage and conveyance projects.** This section clarifies eligibility and requirements for feasibility studies and construction funding for storage and conveyance projects.

**Sec. 9003. Small water storage and groundwater storage projects.** This section authorizes \$100 million for a new competitive grant program for small water storage projects.

**Sec. 9004. Critical maintenance and repair.** This section authorizes \$100 million in funding to support certain Bureau of Reclamation infrastructure that has failed in the last two years. This section also authorizes \$100 million in funding for dams developed under the Carey Act of 1894.

**Sec. 9005. Large-scale water recycling and reuse projects.** This section authorizes \$450 million for a new competitive grant program for large-scale water recycling and reuse projects.

**Sec. 9006. Drought contingency plan funding requires.** This section clarifies how the drought contingency plan funding can be used.

**Sec. 9007. Multi-benefit projects to improve watershed health.** This section authorizes \$100 million for a new competitive grant program for habitat restoration projects in river basins that have been impacted by Bureau of Reclamation water projects.

**Sec. 9008. Eligible desalination projects.** This section provides a technical amendment to current law.

**Sec. 9009. Clarification of authority to use Coronavirus Fiscal Recovery Funds to meet a non-federal matching requirement for authorized Bureau of Reclamation water projects.** The American Rescue Plan authorized State and local funds to be used broadly for water infrastructure. This section clarifies that these funds can be used to satisfy non-Federal matching requirements for authorized Bureau of Reclamation projects.

**Sec. 9010. Federal assistance for groundwater recharge, aquifer storage, and water source substitution projects.** This amendment authorizes the Bureau of Reclamation to provide technical and financial assistance for groundwater recharge, aquifer storage, and water source substitution projects.

## **Title X—Authorization of Appropriations for Energy Act of 2020**

**Sec. 10001. Energy storage demonstration projects.** This section authorizes funding for the Energy Storage Demonstration Projects and Pilot Grant Program authorized by the Energy Act of 2020. This section authorizes \$355,000,000 for FY 22-25 for that program. This section also authorizes \$150,000,000 for FY22-25 for a Long-duration Demonstration Initiative and Joint Program.

**Sec. 10002. Advanced reactor demonstration program.** This section authorizes \$3,211,000,000 for the Advanced Reactor Demonstration Program authorized in the Energy Act of 2020 for FY22-27

**Sec. 10003. Mineral security projects.** This section authorizes \$825,668,000 in funding for FY 22-26 for the National Geological and Geophysical Data Preservation Program, Rare Earth Mineral Security, Critical Material Innovation, Efficiency, and Alternatives, and a Critical Mineral Supply Chain Research Facility authorized by the Energy Act of 2020.

**Sec. 10004. Carbon capture demonstration and pilot programs.** This section authorizes \$3,474,000,000 for FY 22-25 for Carbon Capture Large-Scale Pilot Projects and Carbon Capture Demonstration Projects authorized by the Energy Act of 2020.

**Sec. 10005. Direct air capture technologies prize competitions.** This section authorizes \$115,000,000 for FY 22-25 for the Direct Air Capture Technologies Prize Competition authorized by the Energy Act of 2020.

**Sec. 10006. Water power projects.** This section authorizes \$146,400,000 for FY 22-25 for hydropower and marine energy and National Marine Energy Centers authorized by the Energy Act of 2020.

**Sec. 10007. Renewable energy projects.** This section authorizes funding for the period of FY22-25 for renewable energy demonstration projects including \$84,000,000 for enhanced geothermal systems, \$100,000,000 for wind energy, and \$80,000,000 for solar energy authorized by the Energy Act of 2020. It includes a provision making it clear that the authorization for wind energy is part of the Energy Act authorization.

**Sec. 10008. Industrial emissions demonstration projects.** This section authorizes \$500,000,000 for FY 22-25 for industrial emissions demonstration projects authorized by the Energy Act of 2020.

## **Title XI—Wage Rate Requirements**

**Sec. 11001. Wage Rate Requirements.** This section requires that wages for projects funded under this Act are not less than those prevailing on similar projects in the locality.

## **Title XII—Miscellaneous**

**Sec. 12001. Office of Clean Energy Demonstrations.** This section establishes an Office of Clean Energy Demonstrations at the Department of Energy to coordinate activities relating to the selection, project management, and assessment of demonstration projects funded by the Department.

**Sec. 12002. Extension of Secure Rural Schools and Community Self-Determination Act of 2000.** This section extends the Secure Rural Schools and Community Self-Determination Act.

## **Dam Safety and Removal**

**Dam Safety and Removal:** Includes funding for existing programs at FEMA, NOAA, the Army Corps, the U.S. Forest Service, and the U.S. Fish and Wildlife Service to support dam safety improvements, as well as for removing in-stream barriers to restore fish and wildlife passage and dams. Includes provisions to ensure that this funding provides no new authority to remove, breach, or otherwise alter the operations of a federal hydropower dam. Also includes provisions to ensure dam removal projects include written consent of the dam owner, if ownership is established.

## **48C Tax Credit**

### **Section-by-Section:**

#### **\$8 Billion in Energy-related Manufacturing and Industry:**

- Available as a 30% investment tax credit to manufacturers and other industrial users to retool, expand, or build new facilities that make or recycle energy-related products or to reduce their process-related greenhouse gas emissions.
- Includes a \$4 billion carve out for use in communities where coal mines have closed or coal power plants have retired (that have not previously received the §48C tax credit).

#### **Build New or Retrofit Existing Manufacturing and Industrial Facilities to Produce or Recycle a Wide Range of Energy Products, Including:**

- Advanced electric grid, energy storage, and fuel cell equipment;
- Equipment for the production of low-carbon, low-emission fuels, chemicals and products;
- Renewable energy and energy efficiency equipment, from insulation to geothermal drills;
- Products or technologies that capture, remove, use or store carbon dioxide; and,
- Advanced light-, med-, and heavy-duty vehicles, components, and related infrastructure.

#### **Provides Assistance to Applicants and Creates Jobs Where the Tax Credits are Applied:**

- Provides new guidelines and technical assistance to aid applicants in states that have not accessed the §48C manufacturing tax credit in the past.
- Promotes domestic job creation that draws on existing skilled workforces, particularly workers dislocated from manufacturing, coal mining, or retired coal power plants.
- Promotes reinvestment in communities experiencing high unemployment.
- Enables manufacturers with lower tax liability to elect a direct pay option capped at 85% of the tax credit amount.

## Resiliency – Flood Mitigation

\$7 billion for **Army Corps of Engineers** infrastructure priorities. This includes \$150 million for Corps Investigations for technical assistance and to initiate or complete previously authorized studies. In addition, \$6 billion is provided for Corps construction projects to help address the huge backlog of authorized projects that have yet to receive funding. Included under Corps construction are specific funding set-asides for Coastal Storm Risk Management/Hurricane and Storm Damage Reduction Projects, Inland Flood Risk Management Projects and Aquatic Ecosystem Restoration Projects. Within each of these construction project set-aside language is included that clarifies that a significant amount of this funding is to be reserved for multi-purpose projects/programs. Furthermore, Coastal Storm Risk Management/Hurricane and Storm Damage Reduction Projects would target States that have been impacted by federally-declared disasters over the last six years. In addition, \$500 million is provided for Corps Mississippi Rivers and Tributaries (MR&T) Projects and \$251 million is available for Corps Flood Control and Coastal Emergencies Projects. There is also \$200 million for Corps General Expenses and Regulatory Needs which is split evenly between the Flood Resiliency and Ports and Waterways Working Groups.

\$492M for the **National Oceanic and Atmospheric Administration (NOAA) National Coastal Resiliency Fund**, a partnership with the National Fish and Wildlife Foundation (NFWF). This program improves the resilience of coastal communities to flooding and inundation by restoring or expanding natural ecosystems, while enhancing fish and wildlife habitats and increasing protection for communities from coastal hazards.

\$491M for the **NOAA Community-Based Restoration Project**. This program helps protect the safety and well-being of coastal communities by buffering shorelines from erosion, reducing flooding, and removing potentially hazardous structures.

\$492M for **NOAA mapping, observations and modeling**. Investments in NOAA flood mapping and modeling programs can have significant benefits of protecting lives and property during extreme weather events. Specific programs funded include the Coastal Mapping Program, nextGen National Water Modeling framework, Atlas 14 & Probably Maximum Precipitation, and flood inundation maps (FIM) that depict the extent and depth of floods stemming from actual and forecasted events.

\$25M for the **NOAA National Mesonet Program** for the acquisition and use of data generated by the Upper Missouri River Basin soil moisture and snowpack monitoring network, currently being implemented by the Army Corps of Engineers. This network was authorized by the Water Resources Development Act (WRDA) of 2020. The soil in the Upper Missouri River Basin has the capacity to store more than three times the water in the system's massive reservoirs. Without this monitoring system, forecasters and river managers are unable to adequately assess drought conditions or flood potential - both of which are critical to the protection of life and property in the entire Missouri River Basin.

\$3.5B for **FEMA Flood Mitigation Assistance** program. This program helps provide financial and technical assistance to states and communities to reduce the risk of flood damage to homes and businesses through buyouts, elevation and other activities. These activities protect lives and property and help reduce future federal disaster expenditures.

## Resiliency – BRIC

### Summary Table:

FEMA Building Resilient Infrastructure and Communities (BRIC)	
\$1,000,000,000	General Funding for BRIC

### Section-by-Section:

\$1B for the **FEMA Building Resilient Infrastructure and Communities (BRIC) Program**. This is a pre-disaster mitigation program, supporting states, local communities, tribes and territories undertaking hazard mitigation projects to reduce the risks they face from disasters and natural hazards.

## Resiliency – Waste Management

\$75M for **the RECYCLE Act (S.923)**, which authorizes a new \$15 million per year grant program at the EPA to help educate households and consumers about their residential and community recycling program. This helps decrease contamination in the recycling stream and helps support recycling infrastructure.

\$150M for **critical mineral and battery recycling**, which aims to address the lack of domestic policy, markets, and infrastructure regarding the coordinated collection, recycling and reuse of single use and rechargeable consumer batteries which contain valuable materials needed to support a U.S.-based supply chain.

\$200M for the **NOAA Marine Debris Program**, which promotes action to reduce debris in our ocean, including clean up and response actions needed as a result of severe marine debris events.

\$275M for the **Save Our Seas Act 2.0 Sec. 302 Post-Consumer Materials Management Grants**, at \$55M per year. This would fund a new grant program to support improvements to local post-consumer materials management, including municipal recycling program.

\$100M for the **EPA Pollution prevention program**, where the EPA provides grants and technical assistance to help businesses adopt pollution prevention practices.

\$10M for a **bioproduct pilot program at the U.S. Department of Agriculture** to partner with at least one university affiliated bioproduct research facility to study the relative benefits of using materials derived from agricultural commodities in the production of construction and consumer products. The benefits to be studied include waste management cost and greenhouse gas emission reductions and other environmental benefits.

## Resiliency – Drought

**\$2.2B over 5 years for the Aging Infrastructure Account.** The Aging Infrastructure Account was created in the 2020 Consolidated Appropriations bill. Its function is to provide funds and funding assistance to The Bureau of Reclamation for costs of certain major, nonrecurring maintenance of bureau-owned water infrastructure at water infrastructure projects across the West that are in need of major upgrades or replacement. The total number of treatment facilities that fall under the category the Account covers comes in at 80 percent. As those facilities, most of which are more than 50 years old, continue to age, the issue of treating water thoroughly and in a timely manner only increases.

**\$500M over 5 years for the Western Area Power Administration's power purchase and transmission activities.** The West and Midwest have over the past year been hit by worsening drought conditions and polar vortex, which has impacted WAPA's reserve funds to purchase power on the open market. This funding will provide a critical infusion of funds to ensure that as drought conditions worsen WAPA's does not deplete their power purchase funds. A depletion of funds would result in significant rate increases to customers across 15 states.

**\$80M over 5 years for NOAA procurement of high-performance computing.** This funding will allow NOAA to procure research supercomputing infrastructure used for weather and climate model development to improve drought, flood, and wildfire prediction, detection, and forecasting. NOAA has informed the Drought working group that this is their highest priority for monitoring and responding to drought conditions.

**\$340M for 5 years (total \$1.7B) for Indian Health Services Sanitation Facilities Construction Enhancement.** Sanitation and water infrastructure on tribal lands is severely outdated, as was made clear during the COVID-19 pandemic. This funding will be provided for sanitation facilities construction within Indian Health Services at HHS. Such funds would provide for the planning, design, construction, modernization, improvement, and renovation of water, sewer, and solid waste sanitation facilities that are funded, in whole or part, by the Indian Health Service.

**\$100M over 5 years for Drought Contingency Plan Funding.** The Drought Contingency Plan was agreed between the 7 states of the Upper and Lower Colorado Basins, and approved by Congress, to prepare for increasingly harsh drought conditions. This section provides \$50M each to the Upper and Lower Basins for drought contingency operations, such as monitoring and reclamation at Lake Powell and Lake Mead.

**\$40M over 5 years for Missouri River Basin Drought and Snowpack Monitoring.** This funding is provided to the Army Corps of Engineers to carry out Soil Moisture and Snowpack Monitoring activities as authorized in section 4003(a) of the Water Resources Reform and Development Act of 2014. These activities will enhance soil moisture and snowpack monitoring in the Upper Missouri River Basin to reduce flood risk and improve river and water resource management in the Upper Missouri River Basin as extreme drought conditions spread across the US.

**\$1M over 5 years for a Soil Moisture and Snowpack Monitoring Pilot Program.** This funding will support a NOAA study and pilot program with the State mesonet programs in the Upper Missouri River Basin. The program will study soil moisture and snowpack monitoring network in the Upper Missouri River Basin pursuant to section 511(b)(3) of the Water Resources Development Act of 2020. The study will include assessments of:

- The contribution of the soil moisture, snowpack, and other relevant data generated by the network to weather, sub-seasonal and seasonal, and climate forecasting products on the local, regional, and national levels;
- The enhancements made to the National Integrated Drought Information System, the National Water Model, and the United States Drought Monitor, and other relevant national modeling efforts, using data and derived data products generated by the network;
- The contribution of data generated by the network to remote sensing products and approaches; and
- The viability of the ownership and operational structure of the network.

**\$618M over 5 years for USDA NRCS Watershed Programs.** This section provides \$500M for Watershed and Flood Prevention Operations (WFPO) and \$118M for Watershed Rehabilitation Programs. Both programs are critically important to Western and Midwestern states being hit by drought. WFPO helps units of federal, state, local, and tribal governments protect and restore watersheds up to 250,000 acres. This program provides for cooperation between the Federal government and the states and their political subdivisions to work together to prevent erosion; floodwater and sediment damage; to further the conservation development, use and disposal of water; and to further the conservation and proper use of land in authorized watersheds. The Watershed Rehabilitation Program helps project sponsors rehabilitate aging dams that are reaching the end of their design lives. This rehabilitation addresses critical public health and safety concerns. Since 1948, the Natural Resources Conservation Service NRCS has assisted local sponsors in constructing 11,845 dam projects.

**\$216M over 5 years for Tribal Climate Resilience.** This section provides \$216 million for tribal climate resilience, adaptation, and community relocation planning, design, and implementation of projects which address the varying climate challenges facing tribal communities across the country. Of that, \$130M is for community relocation and \$86M is for climate resilience and adaptation projects.

**\$500M over 5 years for the Low-Income Housing Energy Assistance Program (LIHEAP).** This funding will provide low-income families in hot-weather states assistance with rising energy prices due to extreme heat and drought.

**\$500M over 5 years for the STORM Act** – STORM was signed into law in January and created a new program at FEMA to help states establish revolving loan funds that could be used by local governments to carry out mitigation projects that reduce natural disaster risk. These low-interest loans would allow local governments to invest in resiliency and mitigation projects that help reduce loss of life and property, the cost of insurance, and disaster recovery payments. These

loans would reach communities more quickly than FEMA's traditional grants and provide local communities with capital necessary to invest in more resilient infrastructure.

## Resiliency – Ecosystems

ECOSYSTEMS	
\$500,000,000	USACE Ecosystem Restoration
\$1,000,000,000	Great Lakes Restoration Initiative (EPA)
\$238,000,000	Chesapeake Bay (EPA)
\$89,000,000	Puget Sound (EPA)
\$106,000,000	Long Island Sound (EPA)
\$53,000,000	Gulf of Mexico (EPA)
\$40,000,000	Lake Champlain (EPA)
\$24,000,000	San Francisco Bay (EPA)
\$16,000,000	South Florida (EPA)
\$15,000,000	Southern New England Estuaries (EPA)
\$4,000,000	Pacific Northwest (EPA)
\$79,000,000	Columbia River Basin (EPA)
\$53,000,000	Lake Pontchartrain (EPA)
\$132,000,000	National Estuary Program, 28 Estuaries (EPA)
\$26,000,000	Delaware River Basin (FWS)
\$162,483,000	Klamath Restoration (FWS)
\$16,909,000	Lake Tahoe Restoration Act (FWS)
\$50,000,000	Sagebrush Steppe (FWS)
\$207,000,000	Coastal Zone Management Program (NOAA)
\$77,000,000	National Estuarine Research Reserve System (NOAA)
\$172,000,000	Pacific Coastal Salmon Recovery Fund (NOAA)
\$150,000,000	Ogallala Aquifer Initiative (USDA)
\$60,000,000	Gulf of Mexico and Mississippi and Ohio Rivers Hypoxia
\$56,000,000	Regional Ocean Partnerships
\$150,000,000	Oceans and Coastal Observations (NOAA)
\$5,000,000	Permitting (USCG)
\$20,000,000	Permitting (NOAA)

## Resiliency – Wildfire Management

**Authorizes and funds \$5.75B for Title VIII of the Energy Infrastructure Act of 2021**, as reported out of the Energy & Natural Resources Committee, for natural resources-related infrastructure, wildfire management, and restoration.

\$35.6M per year for 5 years (total \$178M) for the **Department of Interior to carry out hazardous fuels reduction projects**. This amount includes \$2M per year for 5 years (total \$10M) for projects authorized under the **Tribal Forestry Protection Act**.

\$45M per year for 5 years (total \$225M) for the **Department of Interior to carry out Burned Area Rehabilitation** programs.

\$102.8M per year for 5 years (total \$514M) for the **Forest Service to carry out hazardous fuels reduction projects**. This amount includes \$8M per year for 5 years (total \$40M) for projects authorized under the **Tribal Forestry Protection Act**, and \$12M per year for 5 years (total \$60M) for Community Wood Energy and Wood Innovation Grants.

\$45M per year for 5 years (total \$225M) for the **Forest Service to carry out Burned Area Rehabilitation** programs.

\$40M per year for 5 years (total \$200M) for the **Forest Service to carry out State and Private Forestry** grants to states for hazardous fuel work. This includes \$17.6M per year for 5 years (total \$88M) for State Fire Assistance Grants for hazardous fuels projects and \$4M per year for 5 years (total \$20M) for Volunteer Fire Assistance grants.

\$100M per year for 5 years (total \$500M) for **Forest Service Community Defense Grants**.

\$20M per year for 5 years (total \$100M) for the **Forest Service** for construction, maintenance, and decommissioning of roads limited to forest restoration projects.

\$300M over 5 years for the **USDA Natural Resources Conservation Service** for the Emergency Watershed Protection Program.

\$50M in FY22 to **carry out Public Law 102-575**, the Central Utah Project Completion Act.

\$100M over 5 years for **NOAA Fireweather Testbed programs**. These funds will be used to procure new systems and recapitalize existing and outdated systems to improve wildfire prediction, detection, observation, modeling, and forecasting.

**Includes the Wildland Fire Mitigation & Management Commission Act of 2021**, as unanimously reported out of the Homeland Security and Government Affairs Committee, which establishes a commission to study and recommend wildland fire prevention, mitigation, suppression, management, and rehabilitation policies.

**Includes the REPLANT Act (S. 866)**, which removes the current \$30M per year cap on the Reforestation Trust Fund, and will help the U.S. Forest Service plant 1.2 billion trees on national forest lands and create nearly 49,000 jobs over the next decade. The Reforestation Trust Fund is funded by tariffs collected on wood products. Currently revenues over \$30M are directed to the U.S. Treasury General Fund.

## Resiliency – Cyber

**\$20M per year for 5 years (total \$100M) for the Cyber Response and Recovery Fund.** This provision is not law, but passed the Senate in the US Innovation and Competition Act of 2021 to develop a consensus on how best the U.S. can defend itself against cyberattacks. The bill allows the Secretary of Homeland Security to declare a Significant Incident following a breach of public and private networks and a fund that allows the CISA to provide direct support to public or private entities as they respond and recover from significant cyberattacks and breaches. Any unused funds remain available until expended with the program ending September 30, 2028.

The **State, Local, Tribal, and Territorial (SLTT) Grant Program** will be a new authorization with a total \$1B allocated over 4 years (\$200M FY22, \$400M FY23, \$300M FY24, \$100M FY25). Funds are available until expended. Senator Hassan's team has received TA from Federal Emergency Management Agency (FEMA) and CISA, and has the support of Chairman Peters and RM Portman for inclusion. This will establish a new grant program and guard-rails to provide Federal assistance to SLTT entities. The current grant programs to provide cybersecurity assistance to SLTT entities has inherent flaws that this program will address. The program will be administered by FEMA in consultation with CISA acting as the subject matter expert.

**\$31.5M per year over 5 years (total \$157.5M) for DHS Science and Technology Directorate for Research and Development.** These funds will include support for specific areas of research related to risk assessments; cybersecurity vulnerability testing; and positioning, navigation, and timing capabilities.

**\$35M in FY22 for CISA Sector Risk Management.** This is a one-time investment for CISA to establish a capability to oversee and execute cross-sector government critical infrastructure to support CISA's national cross-sector coordination role, established in the FY21 NDAA.

**\$21M to the Office of the National Cyber Director,** which will be available until September 30, 2022. The National Cyber Director was sworn in to office July 14, 2021. This office does not currently have appropriated funds. For the Cyber Director to get to work, this language will bridge a funding gap until such time as funds are appropriated for FY22.

## Low/No Carbon Buses and Ferries

### Funding Table:

LOW CARBON BUSES AND FERRIES	
\$5,000,000,000	Clean School Bus Program
\$1,250,000,000	FTA Passenger Ferry Grant Program
\$250,000,000	Electric Ferry Pilot Program
\$1,000,000,000	Ferry Operations for Rural Communities

**Authorizes and appropriates \$1 billion per year for FY 2022-2026 (total \$5 billion) to implement a school bus change out program (“Clean School Bus Program”) to reduce emissions and improve public health.** Program is created by amending an expired program from the Energy Policy Act of 2005 and would be managed by the Administrator of the Environmental Protection Agency. State or local governments, eligible contractors, and nonprofit school transportation associations are authorized to receive grant funds. Fifty percent of the funds are authorized for zero-emission (electric) school buses, and 50 percent of the funds are authorized for low-emission (LNG, compressed natural gas, hydrogen, propane, biofuel) and zero-emission school buses. Funds may be prioritized for rural or low-income communities and entities that have matching funds available. The Administrator is authorized to provide funds to cover up to 100 percent of the costs for the replacement of the bus.

**Provides \$1.25 billion for the Federal Transit Administration’s Passenger Ferry Grant Program.**

**Directs the Secretary of Transportation to establish a \$250 million pilot program to provide grants for the purchase of electric or low-emitting (methanol, natural gas, liquefied petroleum gas, hydrogen, coal-derived liquid fuels, biofuels) ferries.** Requires that at least one grant be awarded to the State with the largest Marine Highway System and a bi-ferry service with an aging fleet. Funds are authorized and appropriated at \$50 million a year for FY 2022-2026.

**Directs the Secretary of Transportation to establish a \$1 billion Basic Essential Ferry Service.** Eligible places must serve at least two rural areas and have had scheduled ferry transportation service from 2015-2020, Funds are authorized and appropriated at \$200 million a year for FY 2022-2026. Makes operating costs an authorized use under 23 U.S.C. 147 and 23 U.S.C. 238(b).

## State and Tribal Assistance Grants: Brownfields

### Funding Table:

State and Tribal Assistance Grants: Brownfields \$1.5 billion	
\$1,200,000,000	Brownfields Competitive Grants
\$300,000,000	Brownfields Categorical Grants

### Section-by-Section:

#### **\$1.5 billion equally distributed over 5 years for State and Tribal Assistance Grants:**

**Brownfields** This section of the bill would provide significant investment into the Brownfields program to help communities, States, Tribes and others to assess, safely clean up, and sustainably reuse contaminated properties.

It provides **\$1.2 billion** for the **Brownfields competitive grants** while raising grant caps for half of the competitive grant funding under this section (\$600 million).

The remaining **\$300 million** has been dedicated for **Brownfields categorical grants** to support the development and progress being made under state-led Brownfields efforts. All state cost share requirements for this section have been waived.

## Superfund: Remedial

### Funding Table:

Superfund : \$3.5 billion	
\$3,500,000,000	Superfund: Remedial

### Section-by-Section:

**\$3.5 billion available for 5 years for the Remedial account within the Hazardous Substance Superfund.** This section of the bill would allow the Environmental Protection Agency to invest in clean-ups and continue moving forward on remedial actions for Superfund sites. This section also waives the state cost-share requirements and encourages the Administrator to consider the unique needs of Tribal communities with Superfund sites, without changing the process for prioritizing Superfund clean-up sites.

## **Private Sector Leveraging Provisions in the Bipartisan Infrastructure Framework**

This infrastructure framework creates various programs which leverage additional private sector investment in infrastructure programs to create jobs and strengthen the economy. These bonds create the following benefits:

- Stretches federal money by allowing private parties to issue tax-free bonds
- Brings private sector efficiency and decision-making – ensuring projects are completed more efficiently, quickly, and for less money. This will also ensure selection of economically efficient projects.

As currently written, there are no Davis-Bacon\* or prevailing wage provisions.

### **Broadband – JCT estimate \$600 million**

The bipartisan Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband. Adding broadband build outs in unserved areas as a qualified use will attract capital and businesses in areas that otherwise may not be attractive to investment.

### **Carbon Capture – JCT estimate \$242 million**

The bipartisan Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Carbon capture removes carbon dioxide from an emissions stream at a power plant or industrial facility reducing emissions from energy-intensive industries. DAC is an innovative emerging technology that removes carbon dioxide directly from the atmosphere. These technologies allow us to reduce emissions and protect the environment while continuing to use our natural resources, but first generation facilities can cost upwards of \$1 billion. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale.

### **Surface Transportation – JCT estimate \$500 million**

The framework increases the current cap of tax-exempt highway or surface freight transfer facility bonds from \$15 billion to \$30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, \$14,989,529,000 billion of the \$15 billion cap has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

### **Asset Concession Incentives:**

\$100 million equally distributed over 5 years for technical assistance grants for organizational capacity and grants for expert services. This funding will help communities engage in Public-Private-Partnerships (P3s) like asset recycling that generate new revenue and make infrastructure more efficient. It provides \$100 million for grants to facilitate access to expert services and

grants to communities to enhance their technical capacity to participate in public private partnerships. This program would be administered by the Department of Transportation (DOT) and would be used for projects eligible under the Transportation Infrastructure Finance and Innovation Act (TIFIA), which currently include highway, transit, railroad, intermodal freight, and port access projects, and will include airport projects under authorization language included elsewhere in this package. Grantees must demonstrate robust safeguards to protect consumers and state governments from predatory public-private-partnership agreements.

**Value for Money Analysis Requirement:**

Requires applicants for TIFIA and Railroad Rehabilitation & Improvement Financing loans for projects over \$750 million in costs to conduct a Value for Money (VfM) analysis in order to evaluate the benefits of a P3 financing option for significant projects. While a majority of states have P3 enabling laws, financing a project through a P3 model can be complex and costly. This leads to the underutilization of the P3 option. Evaluating the value of the P3 model is an important step that is not always taken.

Conducting a VfM analysis helps a public entity explore the P3 model against traditional public-sector funding and financing. Through a review of projected, risk-adjusted life-cycle costs, a VfM ensures that states and localities are giving the P3 model a fair shot. Through focusing on those projects seeking TIFIA and RRIF loans, DOT will be able to report to Congress on the true utilization of the P3 financing model for those projects of which the P3 model is best suited.

## Permitting Provisions

The permitting provisions include the following components:

The bill includes S. 2324, the Federal Permitting Reform and Jobs Act, which will lift sunset on FAST-41, which is set to expire in December 2022, and expand and improve upon its current authorities. In 2015, Senators Portman and McCaskill co-sponsored the Federal Permitting Improvement Act, which Congress ultimately enacted into law as Title 41 of the Fixing America's Surface Transportation (FAST) Act. That law, now known as FAST-41, significantly reformed the federal infrastructure permitting process, while leaving environmental protections in place. Most significantly, it created the Federal Permitting Improvement Steering Council (Permitting Council), which brings together agencies at the start of the permitting process for some of the largest, most complicated infrastructure projects to prepare a comprehensive plan for the permitting process across agencies. Those projects, known as covered projects, must be subject to NEPA and generally must be likely to require \$200 million or more of investment, unless the Permitting Council believes a project would benefit from enhanced coordination and is likely to require authorizations from more than two federal agencies. The public can track the permitting progress for each of those projects at [www.permits.performance.gov](http://www.permits.performance.gov).

Since FAST-41 became law, the Permitting Council has helped more than 50 projects with their permitting processes, saved projects more than a billion dollars, reduced permitting timelines substantially, helped project sponsors create more than a hundred thousand jobs, and resolved numerous interagency conflicts. This bill will make FAST-41 permanent; expand FAST-41 benefits to tribal projects; set a two-year goal for permitting covered projects; encourage federal agencies to use one document to track permitting decisions ("One Federal Decision"); and improve the Permitting Council's day-to-day operations.

The bill also includes the project delivery provisions of the Surface Transportation Reauthorization Act of 2021, which includes numerous permitting reforms for Title 23 highway projects. It will codify One Federal Decision for highway projects, which sets a two-year goal for completing the environmental review and permitting process for major projects and requires agencies to coordinate on a predictable, joint schedule. Federal agencies are also directed to adopt categorical exclusions that would improve the timeliness of the process. Additionally, the Secretary of the Department of Transportation will be charged with identifying impediments to the permitting process, developing best practices and improving transparency.

## Cryptocurrency

The bipartisan infrastructure framework applies information reporting requirements to digital assets (including cryptocurrency) to ensure they are properly reported to the IRS. The provision includes updating the definition of broker to reflect the realities of how digital assets are acquired and traded. The provision further makes clear that broker-to-broker reporting applies to all transfers of covered securities within the meaning of section 6045(g)(3), including digital assets.

Additionally, digital assets are added to the current rules requiring businesses to report cash payments over \$10,000.

  
**BEST BEST & KRIEGER**   
 ATTORNEYS AT LAW

To:	Municipal Water District of Orange County
From:	Syrus Devers, Best Best & Krieger
Date:	August 4th, 2021
Re:	State Legislative Report

The Legislature began its Summer Recess on July 16th and focused primarily on the budget in the final week but left significant parts unfinished. As discussed in last month's report, appropriating money in the state budget is just the first step in the process. Budget Trailer Bills must then be passed to state how the money allocated in the budget will be spent. If this seems unnecessarily complicated, it may help to recall that the Governor can strike out anything in the Budget Bill (a.k.a., "blue pencil") but he cannot strike language in a Budget Trailer Bill.

One Budget Trailer Bill of interest to the water community, AB 148, has already been signed. That bill was something of a disappointment because of the lack of funding for recycling projects, and because it made relief for unpaid wastewater treatment bills second in line following unpaid drinking water bills. It took significant effort by the California Municipal Utilities Association just to get wastewater covered at all. Under AB 148, unpaid bills for wastewater due to impacts from COVID-19 will only get relief if there is sufficient funds left over after all arrearages for drinking water have been satisfied. The State Water Resources Control Board shall survey water service providers to determine statewide arrearages and then adopt a resolution stating how applications for relief will be processed. A major win in AB 148 was moving the Newsom administration off its position of limiting relief to qualifying low-income rate payers. Had that not happened, water agencies would have been tasked with determining which ratepayers qualified for relief based on income.

As mentioned, much work is left to do on the budget which leaves the door open for additional funding for recycling. BB&K staff is in the process of arranging member meetings to highlight the need for additional funds for recycling for all of its clients. The meetings have so far been productive and key members have agreed to sign onto a joint letter asking for additional funds for recycling. Assembly leadership staff told CMUA that the final amount for recycling projects will likely be the number first proposed by the Senate, which was \$300 million.

The Legislature returns on August 16th for a month-long end of session marathon where the budget will likely be the center of attention the first week.

## Bill Matrix

Prepared by Best Best & Krieger, July 29<sup>th</sup>, 2021

### A. Priority Support/Oppose

Measure	Author	Topic	Status	Location	Brief Summary	Position	Priority	Notes 1
<a href="#">AB 339</a>	<a href="#">Lee D</a>	Local government: open and public meetings.	7/14/2021- From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (July 13). Re-referred to Com. on APPR.	7/14/2021- S. APPR.	The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. Under existing law, a member of the legislative body who attends a meeting where action is taken in violation of this provision, with the intent to deprive the public of information that the member knows the public is entitled to, is guilty of a crime. This bill would require local agencies to conduct meetings subject to the act consistent with applicable state and federal civil rights laws, as specified.	Support	A. Priority Support/ Oppose	Support position adopted April 7th.
<a href="#">AB 361</a>	<a href="#">Rivas, Robert D</a>	Open meetings: local agencies: teleconferences.	7/15/2021- Read second time. Ordered to third reading.	7/15/2021- S. THIRD READING	Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.	Support	A. Priority Support/ Oppose	Support adopted on March 3rd
<a href="#">AB 377</a>	<a href="#">Rivas, Robert D</a>	Water quality: impaired waters.	5/25/2021- Failed Deadline pursuant to Rule 61(a)(5). (Last location	5/25/2021- A. 2 YEAR	Would require, by January 1, 2023, the State Water Resources Control Board and regional boards to prioritize enforcement of all water quality standard violations that are causing or contributing to an exceedance of a water quality standard in a surface water of the state. The bill would require the state	Opposition	A. Priority Support/ Oppose	Oppose position adopted April 7th.

			was APPR. SUSPENSE FILE on 5/19/2021) (May be acted upon Jan 2022)		board and regional boards, by January 1, 2025, to evaluate impaired state surface waters and report to the Legislature a plan to bring all water segments into attainment by January 1, 2050. The bill would require the state board and regional boards to update the report with a progress summary to the Legislature every 5 years. The bill would create the Waterway Recovery Account in the Waste Discharge Permit Fund and would make moneys in the Waterway Recovery Account available for the state board to expend, upon appropriation by the Legislature, to bring impaired water segments into attainment in accordance with the plan.			
<a href="#">AB 442</a>	<a href="#">Mayes I</a>	Surface Mining and Reclamation Act of 1975: exemption: Metropolitan Water District of Southern California: master reclamation plan.	7/12/2021-Read second time and amended. Re-referred to Com. on APPR.	7/8/2021-S. APPR.	The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation. The act exempts certain activities from the provisions of the act, including, among others, emergency excavations or grading conducted by the Department of Water Resources or the Central Valley Flood Protection Board for the specified purposes; surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control; and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Central Valley Flood Protection Board for the purpose of flood control. This bill would additionally exempt from the provisions of the act emergency excavations or grading conducted by the Metropolitan Water District of Southern California (MWD) for its own operations and infrastructure for specified purposes.	Support	A. Priority Support/ Oppose	Support adopted on March 3rd.
<a href="#">AB 703</a>	<a href="#">Rubio, Blanca D</a>	Open meetings: local agencies: teleconferences.	5/7/2021-Failed Deadline pursuant to Rule 61(a)(3). (Last location was L. GOV. on 2/25/2021) (May be	5/7/2021-A. 2 YEAR	Current law, by Executive Order N-29-20, suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic, provided that notice requirements are met, the ability of the public to observe and comment is preserved, as specified, and that a local agency permitting teleconferencing have a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as	Support	A. Priority Support/ Oppose	Support adopted on March 3rd.

			acted upon Jan 2021)		specified. This bill would remove the notice requirements particular to teleconferencing and would revise the requirements of the act to allow for teleconferencing subject to existing provisions regarding the posting of notice of an agenda, provided that the public is allowed to observe the meeting and address the legislative body directly both in person and remotely via a call-in option or internet-based service option, and that a quorum of members participate in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the jurisdiction.			
<a href="#">AB 1195</a>	<a href="#">Garcia, Cristina</a> D	Drinking water.	7/14/2021- Failed Deadline pursuant to Rule 61(a)(11). (Last location was N.R. & W. on 6/9/2021)( May be acted upon Jan 2022)	7/14/2021- S. 2 YEAR	Current law establishes the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. Current law authorizes the state board to provide for the deposit into the fund of certain moneys and continuously appropriates the moneys in the fund to the state board for grants, loans, contracts, or services to assist eligible recipients. This bill would prohibit a public water system from transferring or abandoning a water right held by the public water system except upon approval of the state board, as prescribed.	Oppose unless amended	A. Priority Support/ Oppose	Position adopted May 5th.
<a href="#">AB 1434</a>	<a href="#">Friedman</a> D	Urban water use objectives: indoor residential water use.	5/25/2021- Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 4/27/2021) (May be acted upon Jan 2022)	5/25/2021- A. 2 YEAR	Would establish, beginning January 1, 2023, until January 1, 2025, the standard for indoor residential water use as 48 gallons per capita daily. The bill would establish, beginning January 1, 2025, the standard as 44 gallons per capita daily and, beginning January 1, 2030, 40 gallons per capita daily.	Opposition	A. Priority Support/ Oppose	Opposed position adopted April 7th.
<a href="#">AB 1500</a>	<a href="#">Garcia, Eduardo</a> D	Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2022.	5/20/2021- Joint Rule 62(a), file notice suspended. From committee: Do pass and re-refer to Com. on RLS. (Ayes 12. Noes 3.) (May 20). Re-referre	5/20/2021- A. RLS.	Would enact the Safe Drinking Water, Wildfire Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2022, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$7,080,000,000 pursuant to the State General Obligation Bond Law to finance projects for safe drinking water, wildfire prevention, drought preparation, flood protection, extreme heat mitigation, and workforce development programs.	Out for Analysis	A. Priority Support/ Oppose	Bond intended for Nov. '22 ballot. Will remain "out for analysis" for the near future.

			d to Com. on RLS.					
<a href="#">SB 45</a>	<a href="#">Portantino D</a>	Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022.	6/1/2021-Ordered to inactive file on request of Senator Portantino.	6/1/2021-S. INACTIVE FILE	Would enact the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$5,595,000,000 pursuant to the State General Obligation Bond Law to finance projects for a wildfire prevention, safe drinking water, drought preparation, and flood protection program.	Out for Analysis	A. Priority Support/ Oppose	Bond intended for the Nov. '22 ballot.
<a href="#">SB 222</a>	<a href="#">Dodd D</a>	Water Rate Assistance Program.	7/15/2021-From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.	6/30/2021-A. APPR.	Would establish the Water Rate Assistance Fund in the State Treasury to help provide water affordability assistance, for both drinking water and wastewater services, to low-income ratepayers and ratepayers experiencing economic hardship in California. The bill would require the Department of Community Services and Development to develop and administer the Water Rate Assistance Program established by the bill.	Watch	A. Priority Support/ Oppose	Position adopted 2/3/2021
<a href="#">SB 223</a>	<a href="#">Dodd D</a>	Discontinuation of residential water service.	5/25/2021-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/17/2021) (May be acted upon Jan 2022)	5/25/2021-S. 2 YEAR	Current law requires an urban and community water system to have a written policy on discontinuation of residential service for nonpayment, including, among other things, specified options for addressing the nonpayment. Current law requires an urban and community water system to provide notice of that policy to customers, as provided. This bill would apply those provisions, on and after July 1, 2022, to a very small community water system, defined as a public water system that supplies water to 200 or fewer service connections used by year long residents.	Opposition	A. Priority Support/ Oppose	Oppose position taken on 2/3/2021
<a href="#">SB 230</a>	<a href="#">Portantino D</a>	State Water Resources Control Board: Constituents of Emerging Concern Program.	5/25/2021-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 3/15/2021) (May be acted upon Jan 2022)	5/25/2021-S. 2 YEAR	Would require the State Water Resources Control Board to establish, maintain, and direct an ongoing, dedicated program called the Constituents of Emerging Concern Program to assess the state of information and recommend areas for further study on, among other things, the occurrence of constituents of emerging concern (CEC) in drinking water sources and treated drinking water. The bill would require the state board to convene, by an unspecified date, the Science Advisory Panel to review and provide recommendations to the state board on CEC for further action, among other duties. The bill would require the state board to provide an annual report to the Legislature on the ongoing work conducted by the panel.	Support	A. Priority Support/ Oppose	Support position adopted April 7th.

<a href="#">SB 323</a>	<a href="#">Caballero D</a>	Local government: water or sewer service: legal actions.	7/7/2021-From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.	6/24/2021-A. APPR.	Current law prohibits a local agency from imposing fees for specified purposes, including fees for water or sewer connections, as defined, that exceed the estimated reasonable cost of providing the service for which the fee is charged, unless voter approval is obtained. Existing law provides that a local agency levying a new water or sewer connection fee or increasing a fee must do so by ordinance or resolution. Current law requires, for specified fees, including water or sewer connection fees, any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge or modifying an existing fee or service charge to be commenced within 120 days of the effective date of the ordinance, resolution, or motion according to specified procedures for validation proceedings. This bill would require any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting, modifying, or amending water or sewer service fees or charges adopted after January 1, 2022, to be commenced within 120 days of the date of final passage, adoption, or approval of the ordinance, resolution, or motion, except as provided.	Support	A. Priority Support/ Oppose	Support adopted on March 3rd.
<a href="#">SB 351</a>	<a href="#">Caballero D</a>	Water Innovation Act of 2021.	5/25/2021-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/10/2021) (May be acted upon Jan 2022)	5/25/2021-S. 2 YEAR	Current law establishes the State Water Resources Control Board for the purposes of providing for the orderly and efficient administration of the water resources of the state. This bill, the Water Innovation Act of 2021, would create the Office of Water Innovation at the California Water Commission for the furtherance of new technologies and other innovative approaches in the water sector. The bill would require the office, by December 31, 2023, to take specified measures to advance innovation in the water sector. The bill would make findings and declarations regarding the need for water innovation.	Support	A. Priority Support/ Oppose	Support adopted on March 3rd.
<a href="#">SB 559</a>	<a href="#">Hurtado D</a>	Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.	7/1/2021-Coauthors revised. From committee: Do pass and re-refer to Com. on APPR. (Ayes 11. Noes 0.) (July 1). Re-referred	7/1/2021-A. APPR.	Would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury to be administered by the Department of Water Resources. The bill would require all moneys deposited in the fund to be expended, upon appropriation by the Legislature, in support of subsidence repair costs, including environmental planning, permitting, design, and construction and necessary road and bridge upgrades required to accommodate capacity improvements. The bill would require the department to expend from the fund,	Support	A. Priority Support/ Oppose	Position adopted May 5th.

			d to Com. on APPR.		upon appropriation by the Legislature, specified monetary amounts to restore the capacity of 4 specified water conveyance systems, as prescribed, with 2 of those 4 expenditures being in the form of a grant to the Friant Water Authority and to the San Luis and Delta-Mendota Water Authority. The bill would make operation of these provisions contingent on specified conditions being met. The bill would make these provisions inoperative on July 1, 2030, and would repeal the provisions as of January 1, 2031.			
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## B. Watch

Measure	Author	Topic	Status	Location	Brief Summary	Position	Priority	Notes 1
<a href="#">AB 11</a>	<a href="#">Ward D</a>	Climate change: regional climate change authorities.	4/30/2021- Failed Deadline pursuant to Rule 61(a)(2). (Last location was NAT. RES. on 1/11/2021) (May be acted upon Jan 2022)	4/30/2021- A. 2 YEAR	Would require the Strategic Growth Council, by January 1, 2023, to establish up to 12 regional climate change authorities to coordinate climate adaptation and mitigation activities in their regions, and coordinate with other regional climate adaptation authorities, state agencies, and other relevant stakeholders.	Watch	B. Watch	
<a href="#">AB 50</a>	<a href="#">Boerner Horvath D</a>	Climate change: Climate Adaptation Center and Regional Support Network: sea level rise.	4/30/2021- Failed Deadline pursuant to Rule 61(a)(2). (Last location was NAT. RES. on 1/11/2021) (May be acted upon Jan 2022)	4/30/2021- A. 2 YEAR	Current law requires the Natural Resources Agency, in collaboration with the Ocean Protection Council, to create, and update biannually, a Planning for Sea Level Rise Database describing steps being taken throughout the state to prepare for, and adapt to, sea level rise. This bill would establish the Climate Adaptation Center and Regional Support Network in the Ocean Protection Council to provide local governments facing sea level rise challenges with information and scientific expertise necessary to proceed with sea level rise mitigation.	Watch	B. Watch	
<a href="#">AB 51</a>	<a href="#">Quirk D</a>	Climate change: adaptation: regional climate adaptation planning groups: regional climate adaptation plans.	4/30/2021- Failed Deadline pursuant to Rule 61(a)(2). (Last location was NAT. RES. on 1/11/2021) (May be acted upon Jan 2022)	4/30/2021- A. 2 YEAR	Would require the Strategic Growth Council, by July 1, 2022, to establish guidelines for the formation of regional climate adaptation planning groups. The bill would require the council, by July 1, 2023, and in consultation with certain state entities, to develop criteria for the development of regional climate adaptation plans.	Watch	B. Watch	
<a href="#">AB 59</a>	<a href="#">Gabriel</a>	Mitigation	4/30/2021-	4/30/2021-	Current law authorizes any party to	Watch	B.	

	D	Fee Act: fees: notice and timelines.	Failed Deadline pursuant to Rule 61(a)(2). (Last location was L. GOV. on 1/11/2021) (May be acted upon Jan 2022)	A. 2 YEAR	protest the imposition of a fee, dedication, reservation, or other exactions imposed on a development project within 90 or 120 days of the imposition of the fee, as applicable, and specifies procedures for those protests and actions. The Mitigation Fee Act imposes the same requirements on a local agency for a new or increased fee for public facilities. Current law, for specified fees, requires any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge or modifying an existing fee or service charge to be commenced within 120 days of the effective date of the ordinance, resolution, or motion. Current law also provides that, if an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge and the adjustment results in an increase in the fee or service charge, that any action to attack, review, set aside, void, or annul the increase to be commenced within 120 days of the increase. This bill would increase, for fees and service charges and for fees for specified public facilities, the time for mailing the notice of the time and place of the meeting to at least 45 days before the meeting.		Watch	
<a href="#">AB 100</a>	<a href="#">Holden</a> D	Drinking water: endpoint devices: lead content.	7/7/2021-From committee: Do pass and re-refer to Com. on APPR with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) (July 7). Re-referred to Com. on APPR.	7/7/2021-S. APPR.	The California Safe Drinking Water Act requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Current law prohibits, with certain exceptions, the use of any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption. Current law defines "lead free" for purposes of conveying or dispensing water for human consumption to mean not more than 0.2% lead when used with respect to solder and flux and not more than a weighted average of 0.25% lead when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. This bill would, commencing January 1, 2023, prohibit a person from manufacturing, and offering for sale in the state, an endpoint device, as defined, that does not meet a certain lead leaching standard. The bill would, commencing July 1, 2023, prohibit a person from introducing into commerce or offering for sale in the state an endpoint device that does not meet that lead leaching standard.	Watch	B. Watch	
<a href="#">SB 1</a>	<a href="#">Atkins</a> D	Coastal	7/14/2021-	7/14/2021-	The California Coastal Act of 1976	Watch	B.	

		resources: sea level rise.	July 14 set for first hearing. Placed on suspense file.	A. APPR. SUSPENSE FILE	establishes the California Coastal Commission and provides for planning and regulation of development in the coastal zone, as defined. The act requires the commission, within 90 days after January 1, 1977, to adopt, after public hearing, procedures for the preparation, submission, approval, appeal, certification, and amendment of a local coastal program, including a common methodology for the preparation of, and the determination of the scope of, the local coastal programs, as provided. This bill would also include, as part of the procedures the commission is required to adopt, recommendations and guidelines for the identification, assessment, minimization, and mitigation of sea level rise within each local coastal program, as provided. The bill would delete the timeframe specified above by which the commission is required to adopt these procedures.		Watch	
<a href="#">SB 273</a>	<a href="#">Hertzberg D</a>	Water quality: municipal wastewater agencies.	7/8/2021- Read second time. Ordered to third reading.	7/8/2021- A. THIRD READING	Would authorize a municipal wastewater agency, as defined, to enter into agreements with entities responsible for stormwater management for the purpose of managing stormwater and dry weather runoff, as defined, to acquire, construct, expand, operate, maintain, and provide facilities for specified purposes relating to managing stormwater and dry weather runoff, and to levy taxes, fees, and charges consistent with the municipal wastewater agency's existing authority in order to fund projects undertaken pursuant to the bill. The bill would require the exercise of any new authority granted under the bill to comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. The bill would require a municipal wastewater agency that enters into or amends one of these agreements after January 1, 2022, to file a copy of the agreement or amendment with the local agency formation commission in each county where any part of the municipal wastewater agency's territory is located, but would exempt those agreements and amendments from local agency formation commission approval except as required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.	Watch	B. Watch	
<a href="#">SB 274</a>	<a href="#">Wieckowski D</a>	Local government meetings: agenda and documents.	7/8/2021- Read second time. Ordered to third reading.	7/8/2021- A. THIRD READING	The Ralph M. Brown Act requires meetings of the legislative body of a local agency to be open and public and also requires regular and special meetings of the legislative body to be held within the boundaries of the territory over which the local agency	Watch	B. Watch	

					exercises jurisdiction, with specified exceptions. Current law authorizes a person to request that a copy of an agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. This bill would require a local agency with an internet website, or its designee, to email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the items be delivered by email. If a local agency determines it to be technologically infeasible to send a copy of the documents or a link to a website that contains the documents by email or by other electronic means, the bill would require the legislative body or its designee to send by mail a copy of the agenda or a website link to the agenda and to mail a copy of all other documents constituting the agenda packet, as specified.			
<a href="#">SB 403</a>	<a href="#">Gonzalez</a> D	Drinking water: consolidation.	7/14/2021- July 14 set for first hearing. Placed on suspense file.	7/14/2021- A. APPR. SUSPENSE FILE	The California Safe Drinking Water Act authorizes the State Water Resources Control Board to order consolidation with a receiving water system where a public water system or a state small water system, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water or where a disadvantaged community is substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water. This bill would revise those consolidation provisions, including, among other revisions, authorizing the state board to also order consolidation where a water system serving a disadvantaged community is an at-risk water system, as defined, or where a disadvantaged community is substantially reliant on at-risk domestic wells, as defined.	Watch	B. Watch	
<a href="#">SB 480</a>	<a href="#">Stern</a> D	Metropolitan Water District of Southern California: rules: inappropriate conduct.	7/15/2021- From consent calendar on motion of Assembly Member Arambula. Ordered to third reading.	7/15/2021- A. THIRD READING	The Metropolitan Water District Act provides for the creation of metropolitan water districts and specifies the powers and purposes of a district. The act requires the Metropolitan Water District of Southern California to establish and operate an Office of Ethics and adopt rules relating to internal disclosure, lobbying, conflicts of interest, contracts, campaign contributions, and ethics for application to its board members, officers, and employees. This bill would require the Metropolitan Water District of Southern California to adopt rules relating to inappropriate conduct, as defined, by board members, officers, and employees.	Watch	B. Watch	

<a href="#">SB 526</a>	<a href="#">Min D</a>	Community water systems: lead user service lines.	4/30/2021- Failed Deadline pursuant to Rule 61(a)(2). (Last location was E.Q. on 2/25/2021) (May be acted upon Jan 2022)	4/30/2021- S. 2 YEAR	Current law requires, by July 1, 2020, a community water system with known lead user service lines in use in its distribution system to provide a timeline for replacement of those lines to the State Water Resources Control Board. Current law requires the state board to review and approve an established timeline, and requires, if the state board fails to act within 30 days of the submission of the timeline, the timeline to be deemed approved. Current law authorizes the state board to enforce these requirements, as specified, and a violation is considered a violation of the California Safe Drinking Water Act, subjecting the violator to specified civil and criminal penalties. This bill would, until January 1, 2025, require a community water system to remove or replace the full lead user service line, if the community water system disturbs, removes, or replaces a portion thereof. The bill would apply the above-described enforcement provisions to a violation of the requirements of the bill, thereby creating a state-mandated local program by expanding the scope of crimes under the California Safe Drinking Water Act.	Watch	B. Watch	
<a href="#">SB 552</a>	<a href="#">Hertzberg D</a>	Drought planning: small water suppliers: nontransient noncommunity water systems.	7/5/2021- Read second time and amended. Re-referred to Com. on APPR.	7/1/2021- A. APPR.	Would require small water suppliers, as defined, and nontransient noncommunity water systems that are schools, no later than December 31, 2022, to develop and maintain an abridged Water Shortage Contingency Plan that includes specified drought-planning elements. The bill would require these water systems to report annually specified water supply condition information to the state board through the state board's Electronic Annual Reporting System or other reporting tool, as directed by the state board, and to include water system risk and water shortage information in the water systems' consumer confidence reports, as provided.	Watch	B. Watch	
<b>Total Measures: 27</b> <b>Total Tracking Forms: 27</b>								

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Item No. 1d

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
Metropolitan-sponsored bills	<b>AB 442</b> <b>Mayes (I)</b>  Sponsor: Metropolitan	Amended 5/19/2021  Senate Appropriations Committee	<b>Surface Mining and Reclamation Act of 1975: exemption: Metropolitan Water District of Southern California: single master reclamation plan</b>  Amends the Surface Mining and Reclamation Act of 1975 (SMARA) to prepare a single reclamation plan for emergency excavations or grading on lands owned, leased, or with easements for repairs and maintenance of pipelines, infrastructure, or related transmission systems used to distribute water in Metropolitan's service area.	<b>SPONSOR</b>  Based on October 2019 Board Action	Maintaining critical water infrastructure requires coordinated regulatory compliance. Metropolitan is proposing legislation to allow it to develop a single reclamation plan to consistently administer and enforce SMARA compliance for responding to emergencies and repairing, maintaining or replacing any pipelines, infrastructure, or related transmission systems used to distribute water in Southern California. The May 19 amendments clarify that the State Mining and Geology Board, who will act as lead agency and approve the master reclamation plan, will be able to assess a fee on Metropolitan to recover the Board's costs.
Metropolitan-sponsored bills	<b>SB 230</b> <b>Portantino (D)</b>  Sponsors: Metropolitan and the California Municipal Utilities Association (CMUA)	Introduced 1/19/2021  Senate Appropriations Committee  Two-year bill	<b>State Water Resources Control Board: Constituents of Emerging Concern Program</b>  Seeks to create a statewide program to identify and evaluate Constituents of Emerging Concern (CECs) in drinking water sources.	<b>CO-SPONSOR</b>  Based on October 2019 Board Action	Metropolitan and CMUA are co-sponsoring legislation in response to growing public concern about CECs in drinking water. The bill would establish a CEC Drinking Water Program at the State Water Resources Control Board. The program would set up a consistent and science-based approach for assessing the public health and drinking water consequences of CECs, with the intent to improve knowledge and future regulatory determinations.

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
Drinking Water	<b>AB 588</b> <b>Garcia, E. (D)</b>  Sponsors: Association of California Water Agencies California Association of Mutual Water Companies	Amended 3/30/2021  Assembly Environmental Safety & Toxic Materials  Two-year bill	<b>California Safe Drinking Water Act: compliance</b>  Would allow the State Water Resources Control Board to approve a compliance period of not less than 30 days and no more than 6 months for new primary drinking water standards and would allow an additional 12 months on a case-by-case basis.	<b>SUPPORT</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	The bill would create flexibility for water agencies to comply with new primary drinking water standards. Metropolitan supports granting more time to comply if a contaminant requires extensive treatment and capital investments. Large water agencies with adequate resources may be able to comply sooner with new MCLs, but smaller systems may need longer lead times to invest in routine monitoring and treatment. Water agencies granted longer compliance periods would have to report on progress.
Water Quality and Treatment	<b>AB 377</b> <b>Rivas, R. (D)</b>  Sponsor: California Coastkeeper Alliance	Amended 4/13/2021  Two-year bill	<b>Water quality: impaired waters</b>  Would require the State Water Resources Control Board and Regional Water Quality Control Boards to evaluate impaired surface waters and report to the Legislature a plan to bring them in to attainment by January 1, 2050. Requires by January 1, 2023 the State Water Board and Regional Boards prioritize enforcement of surface water quality standards and creates the Waterway Recovery Account to provide funding to bring impaired surface water segments into compliance	<b>WATCH</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	The April 13 amendment substantively revised the bill. The blanket prohibitions on the issuance of new, renewed, or remodified NPDES waivers, waste discharge requirements, and permits with best management practices have been removed. There is still language with provisions pertaining to new enforcement procedures for discharges that are “causing or contributing to an exceedance of water quality standard in a surface water of the state.” However, it is too early to assess how, or if, the State and Regional boards will take enforcement action on low-threat drinking water discharges to bring “all water segments” into attainment by the 2050 target date.

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
Water Governance and Funding	<b>AB 1195</b> <b>C. Garcia (D)</b>  Sponsor:  Author	Amended 5/24/2021  Senate Environmental Quality Committee  Two-year bill	<b>Drinking water.</b>  Requires the State Water Resources Control Board (State Water Board) to appoint a commissioner to implement the Safe and Affordable Fund for Equity and Resilience Program (SAFER Program) in Southern Los Angeles County.	<b>OPPOSE UNLESS AMENDED</b>  Based upon May 2021 Board Action	Seeks to address the needs of public water systems in Southern Los Angeles County struggling to provide safe and affordable retail water. The May 24 amendments limit the role of the commissioner to focus on implementation of the SAFER Program and create a pilot program with Los Angeles County LAFCO to extend service or consolidate struggling systems. Metropolitan is seeking additional amendments to further clarify the role of the commissioner; strike a provision that grants the commissioner the authority to audit public water systems and bypass the public process created by the Legislature; and strike a section that would grant the State Water Board jurisdiction over groundwater rights.
Delta/State Water Project	<b>SB 369</b> <b>Pan (D)</b>  Sponsor:  Sacramento Area Flood Control Agency	Amended 6/14/2021  Assembly Appropriations Committee  Suspense File	<b>Flood control: Yolo Bypass Cache Slough Partnership Multi-Benefit Program</b>  Codifies State recognition and support for the Yolo Bypass Partnership and its efforts to advance coordinated master planning and accelerate restoration activities for the Yolo Bypass-Cache Slough region.	<b>SUPPORT</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	The 2020 Water Resources Development Act authorized a comprehensive study of the Yolo Bypass and its future role in regional flood control. A state master plan for the Yolo Bypass-Cache Slough would similarly advance multi-benefit restoration projects and encourage state and federal agencies to coordinate regulatory compliance and funding for flood control, water supply, habitat and recreation. The June 14 amendments

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
					support work by the city of West Sacramento in collaboration with state and federal agencies.
Delta/State Water Project	<b>SB 626 Dodd (D)</b>  Sponsor:  Author	Amended 6/21/2021  Assembly Appropriations Committee	<b>Construction Manager/General Contractor Procurement Method: Department of Water Resources</b>  Authorizes the Department of Water Resources (DWR) to use the Construction Manager/General Contractor (CM/GC) procurement method for construction contracts.	<b>SUPPORT</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	The State Water Contractors (SWCs) fund all State Water Project capital and operations and maintenance (O&M) projects. Projects that use the CM/GC or design build procurement method can begin earlier and take less time because of overlapping design and construction phases. This will reduce the overall cost of capital infrastructure, public safety and habitat restoration projects. The bill requires an annual report to the Legislature regarding the use of these procurement methods and sets a limit of no more than seven projects per procurement method. The June 21 amendments clarify the construction manager/general contractor procurement method process.
Delta/State Water Project	<b>AB 979 Frazier (D)</b>  Sponsor:  Author	Amended 4/13/2021  Two-year bill	<b>Sacramento-San Joaquin Delta: projects: sea level rise analysis report</b>  Requires a local or state agency and private developers undertaking a project in the San Joaquin-Sacramento Delta to complete and submit to the Delta Stewardship	<b>OPPOSE</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	The bill as amended on April 13 would apply to Metropolitan as owners of Delta islands and the Department of Water Resources as operator of the State Water Project. A SLR analysis be required using Ocean Protection Council scenarios from a 2018 guidance document including one projecting a 22 additional feet of rise at the Golden Gate bridge. It could add

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
			Council, Delta Protection Commission and Legislature a report that analyzes the impact of sea-level rise (SLR) on the project.		significant costs and delays to Delta levees or habitat restoration projects including the DCP, an action covered under the Delta Reform Plan. Any updates to the plan already require the Delta Stewardship Council to consider sea level rise.
Water/Energy Nexus	<b>AB 1161</b> <b>E. Garcia (D)</b>  Sponsor:  Author	Amended 4/13/2021  Two-year bill	<b>Electricity: eligible renewable energy and zero-carbon resources: state agencies: procurement</b>  Requires the Department of Water Resources (DWR) to procure newly eligible renewable energy resources or zero-carbon resources, and associated energy storage, for state agencies to satisfy their 100% renewable energy goals by December 31, 2030.	<b>OPPOSE</b>  Based upon Board-adopted 2021 State Legislative Priorities and Principles	SB 100 (DeLeon, 2018) set a state goal for 100% carbon-free resources for all state agencies by 2045. Staff have concerns that this bill misplaces the burden of procuring renewable and carbon-free resources and associated storage onto DWR. Procuring energy for other state agencies is outside DWR's purpose and core expertise. Moreover, accelerating the state's goal of 100% renewable and carbon-free energy resources for all state agencies by 2045 to 2030 could dramatically increase Metropolitan's retail electricity rates above what is mandated by SB 100.
Water Bond Infrastructure Funding	<b>AB 1500</b> <b>Garcia, E. (D) and Mullin (D)</b>  Sponsor:  Author	Amended 5/18/2021  Two-year bill	<b>Safe Drinking Water, Wildlife Prevention, Drought Preparation, Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2022</b>  Places a \$6.995 billion wildfire and	<b>SUPPORT AND SEEK AMENDMENTS</b>  Based upon Board adopted 2021	Would provide funding for safe drinking water, wildfire prevention, drought preparation, flood protection, extreme heat mitigation, and workforce development programs.

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
			water bond on the 2022 ballot for voter approval.	State Legislative Priorities and Principles and Board action on AB 3256 (Garcia, 2020) 06/09/2020	Metropolitan is seeking amendments to ensure adequate funding for recycled water projects, water quality monitoring and treatment, and subsidence repairs to conveyance infrastructure projects.
Water Bond Infrastructure Funding	<b>SB 45</b> <b>Portantino (D)</b>  Sponsor: Author	Amended 4/8/2021  Two-year bill	<b>Wildfire, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022</b>  Places a \$5.595 billion wildfire and water bond on the 2022 ballot for voter approval.	<b>SUPPORT AND SEEK AMENDMENTS</b>  Based upon Board adopted 2021 State Legislative Priorities and Principles and Board action on SB 45 (Allen, 2018) 6/11/19	Would provide funding to restore areas damaged by wildfires, mitigate future wildfires, create healthy forests and watersheds, protect water supplies and water quality, and protect and restore rivers, streams and lakes.  Metropolitan is seeking amendments to ensure adequate funding for recycled water projects, water quality monitoring and treatment, and subsidence repairs to conveyance infrastructure projects.
Water Bond Infrastructure Funding	<b>SB 559</b> <b>Hurtado (D)</b>  Sponsors: Friant Water Authority,	Amended 6/14/2021  Assembly Appropriations Committee	<b>Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund</b>  Establishes the Canal Conveyance Capacity Restoration Fund that would upon appropriation provide up	<b>SUPPORT</b>  Based upon Board adopted 2021 State Legislative Priorities and Principles	Portions of the California Aqueduct, the Friant Kern Canal and the Delta Mendota Canal have lost capacity due to subsidence. The Fund would upon appropriation provide funding to DWR to support a 10-year program to restore the capacity of the canals and ensure a more secure water supply. Funds could be used

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

Topic	Bill Number Author	Status	Title – Summary	MWD Position	Effects on Metropolitan
	San Luis & Delta Mendota Water Authority, and State Water Contractors		to \$785 million in funding for the Department of Water Resources (DWR) to help pay for subsidence repairs to the State Water Project and Central Valley Project water conveyance systems and for necessary road and bridge upgrades.		to cover one-third of the cost to restore the capacity of the canals. A federal companion bill is envisioned that would provide one-third the cost and local partners would contribute the remaining one-third of the cost. The creation of the Fund is contingent upon all of the following: an appropriation of funds; an agreement is executed to provide for local cost share; and the provision of adequate cost share as determined by the DWR Director. The June 4 amendments clarify that funding can be through an agreement or other contractual arrangement.
Innovation	<b>SB 351</b> <b>Caballero (D)</b>  Sponsor: California Municipal Utilities Association	Amended 4/20/2021  Two-year bill	<b>Water Innovation Act of 2021</b>  Would create the Office of Water Innovation at the California Water Commission to foster the adoption of new technologies and other innovative approaches in the water sector. Creates the Water Innovation Fund, with monies available upon appropriation, to the Department of Water Resources and State Water Resources Control Board to support water innovation.	<b>SUPPORT</b>  Based upon Board adopted 2021 State Legislative Priorities and Principles	The water sector is facing a myriad of challenges from climate change, aging infrastructure, groundwater contamination, subsidence and freshwater ecosystems vulnerable to climate change. Innovative technologies and approaches are needed to ensure a reliable water supply while trying to address the challenges. An Office of Water Innovation could increase collaboration among state agencies on innovative approaches, engage stakeholders, and review regulations that may inhibit innovation in order to recommend regulatory reforms.

**Metropolitan Water District of Southern California**  
**State Legislative Matrix**  
**July 12, 2021 – First Year of Legislative Session**

<b>Topic</b>	<b>Bill Number Author</b>	<b>Status</b>	<b>Title – Summary</b>	<b>MWD Position</b>	<b>Effects on Metropolitan</b>
Governance	<b>AB 361 R. Rivas (D)</b>  Sponsor:  California Special Districts Association	Amended 5/10/2021  Senate Judiciary Committee  Hearing: July 13, 2021	<b>Open meetings: local agencies: teleconferences</b>  Authorizes local agencies to use teleconferencing during state or local emergencies or when social distancing guidelines have been imposed without complying with physical noticing or quorum requirements under the Ralph M. Brown Act.	<b>SUPPORT</b>  Based upon Board Action on 3/9/2021	Codifies Executive Order N-29-20 that allows for teleconferenced public meetings during state or local emergencies. Metropolitan currently hosts teleconferencing public meetings in accordance with the Executive Order. AB 361 provides statutory clarity allowing Metropolitan to maintain transparency and public participation in public meetings during future declared emergencies.
Governance	<b>AB 703 B. Rubio (D)</b>  Sponsor:  Three Valleys Municipal Water District	Amended 04/29/2021  Two-year bill	<b>Open meetings: local agencies: teleconferences</b>  Amends the Ralph M. Brown Act to allow a local agency to use teleconferencing and removes certain noticing provisions for each teleconferencing location, requires the local agency to allow all members of the public to observe the meeting and address the legislative body in person and remotely by teleconference or internet option, and requires a quorum of members participate in person from a location noticed in the meeting agenda.	<b>SUPPORT</b>  Based upon Board Action on 3/9/2021	Metropolitan currently hosts teleconferencing public meetings in accordance with Executive Order, N-29- 20. AB 703 allows the option to hold teleconferenced meetings into the future after the COVID-19 public health emergency is over and the Executive Order is lifted as long as a quorum of the Board's directors participate in person, give notice and post agendas as prescribed, and the public can address the Board in person or by teleconference.



**DISCUSSION ITEM**

August 4, 2021

**TO: Board of Directors**

**FROM: Robert Hunter, General Manager**

Staff Contact: Harvey De La Torre  
Melissa Baum-Haley

**SUBJECT: INTRODUCTION OF AND CONVERSATION WITH THE NEW MET  
GENERAL MANAGER ADEL HAGEKHALIL**

**STAFF RECOMMENDATION**

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Staff recommends the Board of Directors discuss and file this information.

**REPORT**

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On June 8, the Metropolitan Board approved the contract for the new general manager, Adel Hagekhalil. This will make him the 14<sup>th</sup> general manager of the district's 93-year history.

Hagekhalil is a registered civil engineer and national board-certified environmental engineer, having earned both a bachelor's and master's degree in civil engineering from the University of Houston, Texas. Before joining Metropolitan, he was appointed in 2018 by Los Angeles Mayor Eric Garcetti to serve as the executive director and general manager of the city's Bureau of Street Services. His responsibilities included oversight of the management, maintenance and improvement of the city's network of streets, sidewalks, trees and bikeways. Hagekhalil also focused on climate change adaptation and multi-benefit integrated active transportation corridors.

Previously, he served nearly 10 years as assistant general manager of the Los Angeles' Bureau of Sanitation, leading the city's wastewater collection system, stormwater and watershed protection program, water quality compliance, advance planning and facilities. He also helped develop the city's 2040 One Water LA Plan, an award-winning regional watershed approach to integrate water supply, reuse, conservation, stormwater management and wastewater facilities planning.

<b>Budgeted (Y/N):</b> N/A	Budgeted amount: None	Core <u>X</u>	Choice <u>  </u>
<b>Action item amount:</b> N/A	Line item:		
<b>Fiscal Impact (explain if unbudgeted):</b>			

Hagekhalil is a member of the American Public Works Association as well as the Water Environment Federation, which recognized him in 2019 as a WEF Fellow for his contribution to enhancing and forwarding the water industry. He also served for more than a decade as a board member on the National Association of Clean Water Agencies, including a term as president.

Hagekhalil and his wife, Lubna, reside in Fullerton. They have three children.

Mr. Hagekhalil has been invited to speak at MWDOC's August 4<sup>th</sup> Joint Board Workshop. He is making an effort to meet with all of the Metropolitan Member Agencies and we look forward to this interactive discussion opportunity.

**Attachments: Metropolitan Press Release on Board Confirmation of Adel Hagekhalil as New General Manager**



*The Metropolitan Water District of Southern California*

# NEWS RELEASE

P. O. Box 54153, Los Angeles, California 90054-0153 • (213) 217-6485 • [www.mwdh2o.com](http://www.mwdh2o.com)

*Note to editors: a photo of Adel Hagekhalil is available upon request.*

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Rebecca Kimitch, (213) 217-6450; (202) 821-5253, mobile

June 9, 2021

## METROPOLITAN BOARD CONFIRMS ADEL HAGEKHALIL AS NEW GENERAL MANAGER

Adel Hagekhalil, a national water and infrastructure leader, will take the helm of the nation's largest drinking water provider – the Metropolitan Water District of Southern California – following a vote Tuesday evening by the agency's board of directors.

The 38-member board approved Hagekhalil's contract, making him the 14<sup>th</sup> general manager in the district's 93-year history.

"Mr. Hagekhalil is a highly respected leader on wastewater and water reuse who will help Metropolitan continue on its path to invest in sustainable water supplies. His commitment to innovation, sustainability and working together, as a united Metropolitan board, will be critical as we face the challenges climate change is bringing to Southern California's water supplies," Chairwoman Gloria D. Gray said.

A registered civil engineer and board-certified environmental engineer, Hagekhalil was appointed by Los Angeles Mayor Eric Garcetti in 2018 to lead StreetsLA, the department that manages and maintains Los Angeles' vast network of streets and urban forests, including climate adaptation and multi-benefit integrated active transportation corridors. Previously, he served for nearly 10 years as assistant director of Los Angeles' Bureau of Sanitation, leading the city's wastewater collection system, stormwater and watershed protection program, water quality compliance, and facilities and advance planning. He also helped develop the city's 2040 One Water LA Plan, which takes a regional watershed approach to integrate water supply, water reuse, water conservation, stormwater management, and wastewater facilities planning.

Hagekhalil has also served for more than a decade as a board member on the National Association of Clean Water Agencies, including a term as president, and was named a Water Environment Federation fellow in 2019.

“I am grateful to the entire Metropolitan board of directors for the opportunity to lead this organization, which is so important to the lives and livelihoods of Southern Californians,” Hagekhalil said. “As we move forward, I am determined to focus on what unites us and pursue a unified agenda that includes and works for every member agency. Working together, I believe Metropolitan can continue confronting the challenges we face to ensure water reliability for all our member agencies and communities we serve with focus on our underserved communities while engaging our diverse stakeholders and empowering our staff.”

Hagekhalil replaces long-time General Manager Jeffrey Kightlinger, who led Metropolitan since 2006 and maintained Metropolitan as a globally respected leader in the water industry.

A cooperative of 26 member agencies, Metropolitan provides more than half the water used by 19 million people in six Southern California counties. The district’s 5,200-square-mile service area covers most of urbanized Southern California. Metropolitan imports water from the Colorado River and Northern California to supplement local supplies and provides financial incentives to help local agencies develop increased water conservation, recycling, storage and other water management programs.

Headquartered adjacent to Union Station in downtown Los Angeles, Metropolitan has an annual operating/capital budget of \$1.8 billion, about 1,700 employees and more than 30 facilities throughout Southern California.

In his new post, Hagekhalil will be responsible for leading Metropolitan’s daily and long-term operations, including implementing the policies of the 38-member board. He will also be Metropolitan’s chief spokesman and work with member agencies and federal, state and local officials to carry out Metropolitan's mission to provide water reliability to Southern California.

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***The Metropolitan Water District of Southern California is a state-established cooperative that, along with its 26 cities and retail suppliers, provide water for 19 million people in six counties. The district imports water from the Colorado River and Northern California to supplement local supplies, and helps its members to develop increased water conservation, recycling, storage and other resource-management programs.***



**DISCUSSION ITEM**

August 4, 2021

**TO: Board of Directors**

**FROM: Robert Hunter,  
General Manager**

Staff Contact: Melissa Baum-Haley

**SUBJECT: METROPOLITAN WATER DISTRICT (MET) ITEMS CRITICAL TO ORANGE  
COUNTY**

**STAFF RECOMMENDATION**

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Staff recommends the Board of Directors to review and discuss this information.

**DETAILED REPORT**

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This report provides a brief update on the current status of the following key MET issues that may affect Orange County:

- a. MET's Finance and Rate Issues
- b. MET'S Review of Equal Employment Opportunity Policies and Practices
- c. MET's Integrated Resources Plan Update
- d. MET's Water Supply Conditions
- e. Colorado River Issues
- f. Delta Conveyance Activities and State Water Project Issues

**ISSUE BRIEF #A**

**SUBJECT: MET Finance and Rate Issues**

**RECENT ACTIVITY**

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**Current Update**

Water Transactions for May 2021 totaled 141.6 thousand acre-feet (TAF), which was 4.4 TAF higher than the budget of 137.2 TAF. This translates to \$137.4 million in revenues for May 2021, which were \$11.6 million higher than the budget of \$125.8 million.

Year-to-date water transactions through May 2021 were 1,420.1 TAF, which was 33.7 TAF lower than the budget of 1,453.8 TAF. Year-to-date water transactions through May 2021 were \$1,264.8 million, which were \$30.6 million lower than the budget of \$1,295.4 million.

On May 18, 2021, Metropolitan priced \$271,255,000 of Subordinate Water Revenue Refunding Bonds, 2017 Series C, D, and E. The bonds were initially offered to investors at a rate of SIFMA plus 22 basis points, for a three-year term (SIFMA is an index of weekly tax-exempt variable-rate bonds). This initial pricing met with strong demand with over \$2.1 billion in orders from 23 different accounts. Because of this strong demand, the price was reduced to SIFMA plus 14 points. The transaction closed on May 19, 2021.

Metropolitan staff prudently manages the investment of Metropolitan's funds in accordance with policy guidelines and liquidity considerations. As of May 31, 2021, Metropolitan's investment portfolio balance was \$1,379.6 million.

## **ISSUE BRIEF #B**

**SUBJECT: MET Review of Equal Employment Opportunity Policies and Practices**

### **RECENT ACTIVITY**

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Metropolitan's Board of Directors and executive management are taking steps to foster and ensure a workplace that values equity, inclusion and diversity – both in policy and in practice.

The Metropolitan Board responded to employee comments alleging systemic harassment by authorizing Metropolitan's Ethics Officer to enter into a contract with the Shaw Law Group, a Sacramento-based certified women-owned business enterprise with extensive expertise in Equal Employment Opportunity (EEO) issues. As part of its review, the Shaw Law Group conducted interviews with more than 190 employees; directed a district-wide workplace assessment survey; reviewed existing policies and the process by which EEO claims are handled by management; examined the board's current oversight of employment practices and diversity, equity and inclusion initiatives; and assessed Metropolitan's compliance with industry best practices.

The review focused on the following issues:

1. 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.
2. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
3. Degree of employees' fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
4. Compliance with best practices in these and related areas.
5. 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; and (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

Metropolitan's Board of Directors voted on July 13 to make public the report, which includes recommendations to address the report's observations. The 67-page report, produced by the Shaw Law Group, was presented and discussed at a special July 27 meeting of the board's Organization, Personnel and Technology Committee. For your reference, please find the following Shaw Law Group documents attached.

Additionally, to help ensure greater transparency and accountability, a microsite has also been created on Metropolitan's website that include information about the Board's actions,

policies, correspondence, and related matters, including links to the executive summary and report.

Link: [Metropolitan Employee Concern Microsite](#)

**Attachment: (1) Metropolitan Workplace Climate Assessment: Executive Summary  
(2) Metropolitan Workplace Climate Assessment: Report Observations  
and Recommendations**



**SHAW LAW GROUP PC**  
WORKPLACE ADVICE • TRAINING • INVESTIGATIONS

**WORKPLACE CLIMATE ASSESSMENT:**

**EXECUTIVE SUMMARY**

**PREPARED FOR:**

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

**Jennifer Brown Shaw, Esq.  
Brooke Kozak, Esq.  
Shaw Law Group, PC  
July 20, 2021**

## **I. INTRODUCTION**

The Metropolitan Water District of Southern California (the “District”) retained Shaw Law Group, PC (the “Firm”) in December 2020 to provide the following services: (1) “conduct an independent review of allegations of systemic discrimination, harassment, and retaliation, and related concerns” (“EEO<sup>1</sup> Issues”); (2) evaluate the District’s current policies and processes for handling EEO Issues; and (3) make recommendations to improve the efficacy of the District’s EEO policies and processes (collectively, the “Review”).

The Review focused on the District’s internal practices and culture to identify the sources of its EEO Issues, and opportunities for improvement. We analyzed information provided by current and former District employees and members of the District’s Board of Directors (the “Board”) through a targeted Confidential Workplace Assessment and confidential one-on-one interviews, reviewed thousands of pages of documents, and visited several District sites (collectively, the “Review data”).

In this Summary, we provide a brief overview of the Review process, and our observations and recommendations for the District effectively to prevent, investigate, and resolve violations of its EEO policies.<sup>2</sup>

## **II. BACKGROUND**

### **A. Metropolitan Water District of Southern California**

The District imports and stores water from the Colorado River and other sources in Northern California, and delivers treated and untreated water to 26 member public agencies (the “member agencies”). A 38-member Board, consisting of representatives from each of the member agencies (the “Directors”), is responsible for establishing the District’s policies. The Board includes several standing committees. The Organization, Personnel and Technology (“OP&T”) Committee makes recommendations related to personnel issues. Board and committee meetings are open to the public and provide opportunities for public comment.

### **B. The District’s Employees**

The District employs over 1,800 individuals at its Union Station headquarters and in the field at pumping plants, reservoirs, and water treatment plants. Most of the District’s employees are represented by one of four union bargaining units.

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<sup>1</sup> The term “EEO” refers to “equal employment opportunity.” As used in this Executive Summary (the “Summary”), the terms “discrimination,” “harassment,” and “retaliation” do not refer to legal conclusions or findings. We did not make any legal conclusions or findings related to the Review.

<sup>2</sup> Our “Report of Observations and Recommendations” provides a detailed explanation of each of these areas, and should be read in conjunction with this Summary.

### **C. The District's Management Structure**

The District's General Manager oversees the District's day-to-day operations, and reports to the Board. Three department heads also report directly to the Board. Four Assistant General Managers ("AGMs") report to the General Manager. Most AGMs oversee one or more functional groups, all of which are led by a "Group Manager." Most Group Managers oversee one or more sections, which in turn are managed by a "Section Manager." Most Section Managers oversee one or more units, each of which has a "Unit Manager." Most Unit Managers oversee one or more teams, each of which has a "Team Manager." Since 2018, the District's management structure has undergone several significant changes.

### **D. Internal Responsibility for EEO-Related Investigations**

Currently, the EEO Manager conducts intake of internal EEO-related complaints, and then forwards to Legal those complaints that she determines require an investigation. If Legal agrees that the complaint requires investigation, Legal then assigns the investigation to an external investigator, and manages the investigation. Upon receipt of the external investigator's report, Legal sends the EEO Manager a summary. The EEO Manager then delivers the investigation findings to the employees involved, and, if appropriate, refers the matter to Employee Relations to implement corrective action.

### **E. Context for the Review**

Several internal District developments provide context for the Review:

- In November 2019, the Ethics Office surveyed all District employees regarding ethics-related issues.
- Since March 2020, several District employees and union leaders have spoken out at OP&T meetings regarding their concerns about the District's working environment.
- On April 16, 2020, one of the unions formed a new subcommittee, the AFSCME Women's Caucus, to advocate for issues unique to female and LGBTQ+ employees.
- In July 2020, the District launched a Diversity, Equity and Inclusion ("DE&I") initiative that includes a DE&I Council.
- On June 30, 2021, the California Legislature's Joint Legislative Audit Committee authorized an audit of the District's personnel policies and practices.
- On June 30, 2021, Abel Hagekhalil assumed the role of the District's General Manager.

### **III. OBSERVATIONS AND RECOMMENDATIONS**

The Review focused on the following issues as written in the Action Item that the Board approved on November 10, 2020:

1. 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.
2. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
3. Degree of employees' fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
4. Compliance with best practices in these and related areas.
5. 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; and (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

Based on the Review data, we made the following general observations:

1. The Review data does not support a finding of current widespread EEO Issues at the District.

However, the Review data demonstrates that the District has not properly responded to certain EEO Issues in the past, and some prior managers did not embrace their responsibility to prevent EEO Issues by promoting a positive working environment and effectively managing employee performance. The District's working environment generally appears to be improving, although some current employees with outdated beliefs appear reluctant to change their behavior. New managers are driving heightened expectations for EEO compliance, and Human Resources is making appropriate changes to support them.

Still, the District's current EEO-related processes are in certain aspects ineffective and/or inconsistently applied, which, among other things, increases potential liability for the District.

Further, some of the District's employees who were negatively affected by a lack of appropriate follow-up post-investigation and/or poor past management have difficulty trusting the new managers' efforts, and recognizing and appreciating positive developments.

2. Although the DE&I Council is well intentioned, its current organizational structure hinders the Council's effectiveness. In addition, the Council lacks an experienced manager to lead its efforts.
3. The Review data and the results of the 2019 Ethics Office employee survey demonstrate that although some District employees fear retaliation if they report potential EEO issues, the majority of employees are comfortable raising workplace concerns. The individual level of comfort, however, varies widely depending on an employee's work location, job classification, and demographics (i.e., sex, race, etc.).
4. The District's EEO-related policies and practices, although generally compliant with applicable law, do not fully comport with best practices.
5. The Board's oversight of the issues and concerns identified in the Review's scope is appropriate, given the Board's role in these areas.

Although the District is taking steps to improve its EEO compliance, in our "Report of Observations and Recommendations," we made recommendations for improvement in the following areas:

1. the District's EEO-related policies and practices;
2. the role of managers and District Leadership in preventing EEO Issues, including retaliation;
3. the structure of the EEO Office and its management;
4. the involvement of Legal in EEO-related matters;
5. the District's hiring and performance management processes;
6. the DE&I Council's organizational structure; and
7. the Board's dynamics.

\*\*\*

It appears that the District is committed to preventing future EEO Issues, and encouraging a more positive and respectful working environment. Of course, change takes time, and transforming the culture will require effort on the part of everyone at the District.

Very truly yours,



Jennifer Shaw



Brooke Kozak



**WORKPLACE CLIMATE ASSESSMENT:**

**REPORT OF OBSERVATIONS AND  
RECOMMENDATIONS**

**PREPARED FOR:**

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

**Jennifer Brown Shaw, Esq.  
Brooke Kozak, Esq.  
Shaw Law Group, PC  
July 20, 2021**

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### **EXHIBIT LIST**

- |                  |                                                                                                                                                         |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EXHIBIT 1</b> | Metropolitan Water District of Southern California “Board Action,” dated November 10, 2020                                                              |
| <b>EXHIBIT 2</b> | Summary of SurveyMonkey responses for the “Confidential Workplace Assessment for Metropolitan Water District Employees,” prepared by Shaw Law Group, PC |
| <b>EXHIBIT 3</b> | Shaw Law Group, PC’s “List of Documents Reviewed”                                                                                                       |

## **I. INTRODUCTION**

Metropolitan Water District of Southern California (the “District”) retained Shaw Law Group, PC (the “Firm”) to provide the following services: (1) “conduct an independent review of allegations of systemic discrimination, harassment, and retaliation, and related concerns” (“EEO<sup>1</sup> Issues”); (2) evaluate the District’s current policies and processes for handling EEO Issues; and (3) make recommendations to improve the efficacy of the District’s EEO policies and processes (collectively, the “Review”).<sup>2</sup>

The Review focused on the District’s internal practices and culture to identify the sources of its EEO Issues, and opportunities for improvement. We analyzed information provided by current and former District employees and members of the District’s Board of Directors (the “Board”) through a targeted Confidential Workplace Assessment and confidential one-on-one interviews, reviewed thousands of pages of documents, and visited several District sites (collectively, the “Review data”).

This Report summarizes the Review process and our methodology, observations and recommendations for the District effectively to prevent, investigate, and resolve violations of its EEO policies.<sup>3</sup>

## **II. RELEVANT BACKGROUND INFORMATION**

Below is background information relevant to the Review. Except as otherwise noted, this information is not in dispute.

### **A. About the Metropolitan Water District of Southern California**

In 1928, the California Legislature established the District to construct and operate the 242-mile Colorado River Aqueduct (the “CRA”). The District imports and stores water from the Colorado River and other sources in Northern California, and delivers treated and untreated water to 26 member public agencies (the “member agencies”). The member agencies, consisting of 14 cities, 11 municipal water districts, and one county water authority, deliver water to 19 million people in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties.

A 38-member Board, consisting of representatives from each of the member agencies (the “Directors”), is responsible for establishing the District’s policies. The Board includes several standing committees. The Organization, Personnel and Technology (“OP&T”) Committee makes

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<sup>1</sup> The term “EEO” refers to “equal employment opportunity.” As used in this Report of Observations and Recommendations (the “Report”), the terms “discrimination,” “harassment,” and “retaliation” do not refer to legal conclusions or findings. We do not make any legal conclusions or findings related to the Review.

<sup>2</sup> The District’s EEO policies are described below in **Section VI.A.**

<sup>3</sup> On July 12, 2021, the Firm submitted to the Board an earlier version of this Report under the attorney-client privilege. On July 13, 2021, the Board voted to waive the attorney-client privilege with respect to the Report. This Report reflects minor edits to the initial report.

recommendations related to personnel issues. Board and committee meetings are open to the public and provide opportunities for public comment.

## **B. The District's Locations**

The District employs over 1,800 people.<sup>4</sup> The District's headquarters are located in downtown Los Angeles in a building at Union Station ("Union Station"). Approximately 50% of the District's employees work at Union Station. The remaining 50% work at "field" facilities, including pumping plants, reservoirs, and water treatment plants.

### **1. Pumping Plants**

The District owns and operates the CRA to convey water from the Colorado River at Lake Havasu to reservoirs in Southern California. Five pumping plants along the CRA in the California Mojave Desert move water through a distribution system of canals, tunnels, and concrete pipe. The pumping plants (from east to west: Intake, Gene, Iron Mountain, Eagle Mountain, and Hinds) generally are referred to as the District's "desert" facilities.

Approximately 80 employees work at Gene, the largest of the pumping plants. Between eight and 30 employees work at each of the other pumping plants. The District provides housing and common recreation areas (e.g., swimming pools, dining halls) for employees who work at desert facilities, in part because most of those locations are relatively remote.<sup>5</sup> In some cases, the nearest grocery store is approximately 65 miles away.<sup>6</sup> Employees living in District housing enter into a lease agreement and pay minimal rent. Some desert facilities also provide lodging for guests (and employees when necessary).

### **2. Reservoirs and Water Treatment Plants**

The District stores fresh water in nine reservoirs, the largest of which are Diamond Valley Lake, Lake Mathews, and Lake Skinner. The District also maintains the Wadsworth Pumping/Hydro-generating facility, the largest of the District's 16 hydroelectric power plants, at Diamond Valley Lake.

The District owns and operates five treatment plants throughout its service area: Diemer, Jensen, Mills, Skinner, and Weymouth. The District also operates a water quality laboratory at the Weymouth facility, where scientists regularly test the water supply.

District employees generally refer to the reservoirs and treatment plants as "town," to distinguish these facilities (and Union Station) from the desert facilities.

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<sup>4</sup> As of December 31, 2020, the District employed 1,780 regular, full-time employees. In addition, the District employs a fluctuating number of temporary employees, retired annuitants, and recurrent employees.

<sup>5</sup> There are recreational shooting ranges at some of the desert facilities. It is unclear if these ranges were provided by the District.

<sup>6</sup> Gene and Intake are near more populated areas, including Parker Dam and Lake Havasu.

### **C. The District's Employees**

The District provides its employees with a relatively generous compensation and benefits package, as compared to other employers in and around Southern California and Western Arizona. This package makes employment with the District relatively attractive. As a result, employees tend to have long careers with the District. In addition, employees frequently refer friends and family for open District positions. Several employees reported during the Review that candidates must know or be related to a current District employee to be hired.<sup>7</sup>

#### **1. Apprenticeship Program**

The District's Apprenticeship Program provides one avenue for applicants to obtain employment with the District. The program, which is approved by the State of California, trains participants to become journey-level mechanics or electricians. The District hires individuals selected for the program, and pays them during their classroom coursework and on-the-job training, which is provided by journeypersons at one of the District's pumping or water treatment plants. When employees graduate from the program, they become journeypersons, and may begin mentoring apprentices.

#### **2. Demographics**

The District's "Semi-Annual Report on EEO Policy and Affirmative Action Plan," dated July 13, 2021, shows that the District employed 1,780 regular employees as of December 31, 2020.<sup>8</sup> The report includes the following demographic information:

<b>Demographic</b>	<b>Number</b>
<b>Total Employees</b>	<b>1,780</b>
Female	499 (28%)
Male	1,281 (72%)

<b>Demographic</b>	<b>Number</b>
<b>Total Employees</b>	<b>1,780</b>
<b>White</b>	<b>787 (44%)</b>
<b>People of Color<sup>9</sup></b>	<b>993 (56%)</b>

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<sup>7</sup> The District's recruiting and hiring practices are discussed below in **Section VI.A.1**.

<sup>8</sup> The District posted the report in advance of the July 13, 2021, Board meeting. We also reviewed similar reports that the District provided to the Board in 2019 and 2020.

<sup>9</sup> The District used the term "people of color" in the report. The Board used the term "racial and ethnic minorities" in defining the scope of the Review. For consistency, we use the latter term in this Report.

Demographic	Number
Two or More Races	25 (1%)
Asian	356 (20%)
Black or African American	112 (6%)
Hispanic or Latino	489 (28%)
American Indian or Alaskan Native	7 (1%)
Native Hawaiian or other Pacific Islander	4 (>0%)

### 3. Employee Resource Groups

Employee resource groups (“ERGs”) are employee-led groups that connect individuals who share common interests, backgrounds, or demographic factors. ERGs generally exist to build community, support career development, and provide an opportunity to discuss work issues and experiences. The District sponsors eight different ERGs: the Armenian American Employee Group, the Asian American Employee Organization, the Black Employees’ Association (“BEA”), the Hispanic Employees’ Association, MWD – Society of Women Engineers, the Native American/Alaskan Native Employee Association, the Persian American Employee Organization, and Women at Metropolitan.

### 4. Women in Trade Classifications

The District’s “Report on Females in Apprenticeship Program and Trades,” dated October 27, 2020, shows that from 2003 to 2019, 218 employees participated in the District’s Apprenticeship Program. Of those participants, nine (4%) were female and 209 (96%) were male. Of the nine female participants, four did not complete the program, two were still in the program as apprentices as of the date of the District’s report, and three had graduated from the program.<sup>10</sup>

The report also shows that from 2005 to 2019, the District employed 18 females in trade classifications.<sup>11</sup> As of the date of the report, nine of these employees had separated from the District, seven remained employed with the District in trade classifications, and two remained employed with the District in other classifications.<sup>12</sup>

<sup>10</sup> One of the two female employees included in the report as an apprentice has since resigned her employment with the District.

<sup>11</sup> “Trade classifications” are positions included in the “Skilled Craft Workers EEO4 category” (e.g., electricians, coaters, heavy equipment operators, linemen, mechanics, pump plant specialists, and water treatment plant operators), and in the “Service-Maintenance EEO4 Category” (e.g., apprentices, coaters, commercial truck drivers, electricians, maintenance assistants, and mechanics). As part of the Review, the District provided a list of the 18 females in trade classifications, which includes females in Dispatcher positions.

<sup>12</sup> One of the two employees included in the report as a female employed in a non-trade classification has since resigned their employment with the District.

Additionally, the report reveals that, of the 18 females employed in trade classifications from 2005 to 2019, six (33%) submitted EEO complaints to the District. Five of the six complaints contained allegations of sexual harassment and/or gender-based discrimination.<sup>13</sup> All five women who complained of sexual harassment and/or gender-based discrimination have submitted more than one internal complaint to the District.

#### **D. The District's Bargaining Units**

Most of the District's employees are represented by one of four bargaining units:

- The American Federation of State, County, and Municipal Employees Local 1902 ("AFSCME") represents employees in the "general employee" unit, most of whom work in rank-and-file positions.<sup>14</sup> AFSCME Local 1902 members comprise approximately 80% of the District's employee population. The District releases the AFSCME President and Vice President from their regular work assignments to handle AFSCME business on a full-time basis.
- The Association of Confidential Employees ("ACE") represents employees in both rank-and-file and supervisory/managerial positions who work in confidential units, including Ethics, Human Resources ("HR"), and Legal.
- The Supervisors Association, an affiliate of the International Brotherhood of Electrical Workers, represents employees in supervisory and entry-level managerial positions.
- The Management and Professional Employees Association ("MAPA") represents employees in both rank-and-file and supervisory/managerial positions who work in professional units, including Engineering and Information Technology ("IT"). MAPA also represents employees in "middle" management positions, including Section Managers and Unit Managers.

Each bargaining unit has a five-year Memorandum of Understanding ("MOU") with the District. The current MOUs for each bargaining unit expire on December 31, 2021. The bargaining units and the District will begin negotiating new MOUs in the near future. Employees generally perceive an adversarial relationship between AFSCME and managers, but not with the other unions.

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<sup>13</sup> The sixth complaint contained allegations of age-based discrimination. After the District prepared the report, a seventh female in a trade classification submitted an internal complaint claiming age-based discrimination.

<sup>14</sup> The term "rank-and-file" refers to employees who do not work in supervisor or manager positions. In the Review, we often compared Review data from rank-and-file employees and employees in management/supervisory positions, whom we refer to collectively in this Report as "managers."

## **E. The District's Management Structure and Management Training Programs**

### **1. Executive Management**

The District's General Manager oversees the District's day-to-day operations and reports to the Board.<sup>15</sup> Three department heads also report directly to the Board: General Auditor Gerald Riss, General Counsel Marcia Scully, and Ethics Officer Abel Salinas.

Four Assistant General Managers ("AGMs") report to the General Manager: Chief Operating Officer ("COO") Deven Upadhyay, Chief Administrative Officer ("CAO") Shane Chapman, Chief Financial Officer ("CFO") Katano Kasaine, and Chief External Affairs Officer Dee Zinke.<sup>16</sup>

### **2. Groups, Sections, Units, and Teams**

Most AGMs oversee one or more functional groups, all of which are led by a "Group Manager." The COO oversees the Engineering, Water Resource Management ("WRM"), and Water Systems Operations ("WSO") groups. Approximately 50% of the District's employees work in WSO, the largest group in the organization. The CAO oversees the IT, HR, and Real Property groups.

Most Group Managers oversee one or more sections, which in turn are managed by a "Section Manager." Most Section Managers oversee one or more units, each of which has a "Unit Manager." Most Unit Managers oversee one or more teams, each of which has a "Team Manager." Team Managers are entry-level management positions.

### **3. Management Training**

Several years ago, the District determined that a significant number of employees statistically were nearing retirement age. To prepare for future staffing needs, the District implemented a number of succession planning strategies.

To that end, in 2014, the District created a "Management Academy" open to WSO non-supervisory employees interested in progressing to a management position. Because it was so well-received, the Management Academy is now a District-wide program called the "Leadership Academy." The Leadership Academy, which is operated by the District's Training Unit, emphasizes emotional intelligence skills and self-awareness. Each time the District accepts applications for the Leadership Academy, approximately 170 employees apply for 30 available

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<sup>15</sup> As we discuss more fully below, Adel Hagekhalil succeeded Jeffrey Kightlinger as the General Manager on June 30, 2021.

<sup>16</sup> We refer to the four department heads and the four AGMs collectively as "Executive Management." We refer to Executive Management and Group Managers as "District Leadership."

spots. A panel of managers and union representatives selects 50% of the participants; the other 50% are selected through a lottery process.<sup>17</sup>

The District's Training Unit also offers a program called "Metropolitan Management University," to help new managers develop skills in strategic thinking, generating trust, and developing employees. The program's modules cover various topics, including "Policy & Compliance," "Business Acumen," "Managing & Leading Others," "Performance Management," "Interpersonal Effectiveness," and "Decision-Making."<sup>18</sup>

#### **F. Significant Changes to the District's Management Structure Since 2018**

Since 2018, the District's management structure has undergone several significant changes.

First, in January 2018, Upadhyay promoted from WRM Group Manager to COO, and Chapman returned to the District as the CAO.<sup>19</sup> The CFO, the Ethics Officer, and most of the Group Manager positions also have turned over in the last five years.<sup>20</sup>

Then, in September 2018, the District initiated an investigation into internal complaints regarding the workplace conduct of then-Unit Manager Don Nash. Nash managed the Desert Unit, one of two units reporting to the Conveyance & Distribution ("C&D") Section Manager in the WSO group. In October 2018, the District placed Nash on administrative leave, and Glen Boyd replaced Jim Kostecky as the C&D Section Manager.<sup>21</sup> The District's Security Unit conducted the investigation. In March 2019, the Security Unit submitted a final investigation report substantiating the majority of the allegations against Nash, including misuse of District funds, abusive conduct toward employees, and misuse of alcohol and firearms. The District subsequently terminated Nash's employment based on the findings of the investigation.<sup>22</sup>

In early 2019, Upadhyay elevated the desert from a unit to a section by dividing C&D into two sections: C&D-Desert Region and C&D-Eastern and Western Regions. Effective March 10, 2019, former Unit Manager Gene Patricio promoted to the new C&D-Desert Region Section

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<sup>17</sup> Many employees perceive that only favored employees are selected for the program, and do not realize that 50% of the spaces available in each cohort are selected through the lottery.

<sup>18</sup> The District also provides comprehensive EEO compliance training, among other topics, to its rank-and-file employees.

<sup>19</sup> Chapman was an Assistant Group Manager in WSO until 2010, when he left the District to work as the General Manager of one of the District's member agencies.

<sup>20</sup> The current HR Group Manager, Diane Pitman, assumed her role in 2015.

<sup>21</sup> Kostecky is now the Unit Manager at Jensen.

<sup>22</sup> During the District's investigation, Nash continued to reside in the District-provided housing unit he occupied. On May 16, 2019, the District issued to Nash a Notice of Intent to Discharge and a 60-day notice to vacate his residence. The District subsequently reached an agreement that required Nash to vacate his housing unit by July 16, 2019, the date of his termination. On or about July 15, 2019, Nash died by suicide in the housing unit.

Manager position. Although Patricio works out of Gene, he does not live in District-provided housing.

On March 29, 2019, former WSO Group Manager Jim Green retired. Then-Assistant Group Manager Brent Yamasaki served as the interim Group Manager for approximately eight months before his official appointment to the position on November 3, 2019.

In March 2020, Kightlinger announced his intention to “step down” at the end of the year. The Board retained The Hawkins Group to assist with the recruitment of a new General Manager. The successful candidate, Hagekhalil, assumed the role on June 30, 2021.

#### **G. Internal Responsibility for EEO-Related Investigations**

In or around 2010, former HR Group Manager Fidencio Mares restructured the District’s EEO Office. EEO Manager Olivia Sanchez retained her duties related to the District’s affirmative action and outreach programs. Mares moved then-Senior HR Analyst Alicia King from Sanchez’s team to HR Section Manager Stephen Lem’s team, and assigned Sanchez’s EEO investigation duties to Alicia King.<sup>23</sup>

In early 2019, Pitman created three new “Strategic Partner” positions in HR. As a result, a Strategic Partner is assigned to each group. The Strategic Partners provide guidance and support on HR issues. Alicia King was selected for one of the three Strategic Partner positions, and currently supports the WSO group. At that point, Pitman returned responsibility for EEO investigations to Sanchez.

Because Sanchez’s workload does not allow her to conduct EEO investigations, she conducts intake of internal complaints, and then forwards to Legal those complaints that she determines require an investigation. If Legal agrees that the complaint requires investigation, Legal then assigns the investigation to an external investigator, and manages the investigation. Upon receipt of the external investigator’s report, Legal sends Sanchez a summary. Sanchez then delivers the investigation findings to the employees involved, and, if appropriate, refers the matter to Employee Relations to implement corrective action.

Pitman intends to hire an internal investigator in the near future who will report directly to her.

#### **H. Historical Context Related to the Review**

Several internal District developments provide context for the Review.

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<sup>23</sup> Although we generally refer to individuals in this Report using only their last name after their first mention, we refer to Alicia King by her first and last name to distinguish her from Lee King, a former District employee introduced later in this Report, whom we also refer to by their first and last name and/or their pronouns “they/them/their.”

### **1. Ethics Survey**

In November 2019, the Ethics Office surveyed all District employees regarding ethics-related issues (the “Ethics Survey”). Approximately 65% of District employees at the time participated in the survey. Of those participants, 49% responded favorably to the statement, “I can disclose a suspected violation without fear of reprisal.”

### **2. Formation of the AFSCME Women’s Caucus**

On April 16, 2020, AFSCME formed a new subcommittee, the AFSCME Women’s Caucus, to advocate for issues unique to female and LGBTQ+ employees. Environmental Specialist Ellen Mackey, a District Employee, is the Chair of the Caucus.

### **3. Formation of the DE&I Council**

In July 2020, in the wake of the global focus on racial inequity and injustice following the murder of George Floyd, the District launched a DE&I initiative that includes a DE&I Council. Chapman leads the DE&I Leadership Advisory Team, which oversees the District’s DE&I initiative. The Leadership Advisory Team provides information, advice, and support to the DE&I Council. The DE&I Council is comprised of two representatives from each of the bargaining units and ERGs, and additional representatives from some of the bargaining units to represent employees who work at field facilities.

The District retained Scottie Oliver, CEO of The Scottie Group, to facilitate the DE&I Council’s monthly meetings and assist Council members in the “development of core ‘building blocks’ for sustained change and organizational effectiveness.” As part of their efforts, the Council created the following “Mission Statement”:

The DE&I Council’s purpose is to promote and enhance diversity, equity and inclusion throughout the organization and ensure accountability in [the District]’s commitment to create an inclusive culture and work environment that values diversity and equity for all [District] employees.

The Council will work collaboratively to identify, define and recommend best practices and strategies in organizational culture, workforce recruitment, development and retention that are the hallmark of innovative and high-performing organizations.

On October 13, 2020, Mackey informed the OP&T Committee that the AFSCME Women’s Caucus intended to “boycott” the DE&I Council because the Council is led by “the same chain of management” that created and perpetuated the “internal discrimination and harassment” the District formed the Council to examine.<sup>24</sup>

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<sup>24</sup> As we discuss in **Section VI.B.** below, the DE&I Council’s purpose is in dispute.

On October 26, 2020, AFSCME President Alan Shanahan informed Board Chairwoman Gloria Gray that AFSCME “must remove itself from DE[&]I participation,” due to concerns that the Council was “just another exercise by management to appease and quiet symptoms to make them disappear, instead of looking at the cancer that is destroying the insides of the District.”

On October 27, 2020, the BEA President Tuannee Holmes informed the OP&T Committee that the BEA was resigning from the Council because the Council did not intend to produce tangible results leading to cultural change.

AFSCME and BEA have since rejoined the DE&I Council, but the Women’s Caucus has not.

#### **4. Relevant Public Comments to the Board**

On March 9, 2020, Shanahan spoke to the OP&T Committee regarding favoritism in the District’s hiring practices. He stated that HR does not have appropriate recruitment or promotion procedures in place.

On July 13, 2020, Mackey spoke to the OP&T Committee regarding the then-newly-formed AFSCME Women’s Caucus. She explained that the mission of the Caucus is “to proactively address a culture of sexism, racism, misogyny, ageism, nepotism, favoritism, harassment, and sexual harassment that permeates much of [the District],” and its goals include protecting women and LGBTQ+ employees from retaliation for reporting workplace concerns. Mackey explained that the District’s culture “protects perpetrators,” either by summarily dismissing or improperly investigating complaints of harassment, including sexual harassment.

At the same meeting, two members of the AFSCME Women’s Caucus, former Operations and Maintenance (“O&M”) Technician IV Lee King, and O&M Technician IV Gina Chavez, told the OP&T Committee about the sexual harassment, abuse, and retaliation they encountered while working at desert facilities as the District’s first female journey-level electrician and mechanic, respectively.<sup>25</sup>

On August 18, 2020, AFSCME representative Jeff Cable addressed the OP&T Committee to share his concern about the District’s practice of requiring employees who agree to settle complaints against the District to sign agreements containing non-disclosure provisions.<sup>26</sup> On September 15, 2020, Cable informed the OP&T Committee that employees are fearful to report concerns because they suffer retaliation when they do so, and HR and Legal represent the interests of the District, not the employees.

On October 13, 2020, Water Treatment Plant Operator II and AFSCME Women’s Caucus member Miranda Grow told the OP&T Committee that 10 years ago, a month after she entered the

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<sup>25</sup> At the time Lee King began the Apprenticeship Program, they were recognized as the District’s first female apprentice. In or around February 2020, Lee King disclosed that they are transgender/non-binary.

<sup>26</sup> In our experience, this practice is common when an employer resolves an employee’s complaint with monetary terms.

District's Apprenticeship Program, a male co-worker sexually assaulted her. She stated that the District investigated and substantiated her claims, but then forced her to work with her assailant for three more years until she left the Apprenticeship Program and transferred to a different facility. In late 2019, her assailant transferred to that same facility, which made Grow feel unsafe. In the meeting, Grow complained that managers did not take her complaints seriously, and she felt isolated. At the same meeting, Shanahan stated that female District employees who work in trade classifications experience discrimination.

On October 20, 2020, Kightlinger issued a memorandum to all District employees regarding "Employee Public Comments at 10/13/20 OP&T and Board Meetings" (the "October 20 Memo"). The October 20 Memo contains information about the District's response to the 2010 incident Grow shared with the OP&T Committee on October 13, 2020, and expressed the District's intolerance of "inappropriate conduct of a sexual nature of any form in the workplace," and commitment to providing a "diverse, equitable, and inclusive work environment."<sup>27</sup> The October 20 Memo does not address Grow's comments about her safety concerns.

On October 27, 2020, Mackey and AFSCME Vice President-elect Laura Garcia requested that the OP&T Committee advise the Board to investigate the District's working environment. Mackey and Shanahan stated that the October 20 Memo was intended to "silence" Grow from making additional public comments by "publicly shaming" her. Former Senior Engineer Amy Dorado reported that the District's internal mechanisms to ensure a professional and respectful workplace are "broken." Chavez and Lee King commented that managers retaliate against and blame employees who complain to HR about workplace issues, including both of them.

On November 9, 2020, AFSCME representative Jeff Froehlich announced to the OP&T Committee his support of an independent review of EEO Issues at the District, and asked the Committee to include favoritism in hiring practices in the review. Chavez told the Committee that Grow, Lee King and she were on administrative leave partly because they had experienced retaliation for making comments to the Committee.

## **5. November 2020 Board Action**

After the October 27, 2020, OP&T Committee meeting, Directors and former District employees Sylvia Ballin, Adán Ortega, and Charles Treviño sent a memorandum to OP&T Committee Chairman John Murray regarding "Addressing Allegations of Systemic Workplace Harassment and Fear of Retaliation at [the District] Through an Independent Review & Evaluation" (the "Review Request Memo"). The Review Request Memo contains a recommendation to authorize the Ethics Officer to retain outside legal counsel to conduct an independent review of various issues, including the DE&I Council boycotts, harassment claims, Board oversight of policies addressing EEO issues, employment and promotion practices, and the working environment at the District for women, racial and ethnic minorities, and LGBTQ+ employees.

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<sup>27</sup> On that same date, Kightlinger also issued a communication to the Board containing additional details regarding the District's response to Grow's 2010 complaint.

On November 10, 2020, the Board approved an action item, based on the Review Request Memo, authorizing Salinas to retain outside legal counsel “to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation and related concerns.”<sup>28</sup> The Board instructed Salinas to direct the outside counsel’s work without the involvement of District Leadership or Legal.

**I. The Board’s Retention of Shaw Law Group, PC**

**1. Selection Process**

On December 7, 2020, Salinas provided the OP&T Committee an update regarding the Review. He explained that a panel consisting of two Assistant Ethics Officers and himself determined that the outside legal counsel retained for the Review should specialize in workplace investigations; have no prior history of contracting with the District; and be experienced working with public agencies, presenting to Boards of Directors, and making post-investigation recommendations. After interviewing five law firms, the Ethics Officer selected the Firm to conduct the Review.<sup>29</sup>

**2. The Task Order Investigations**

In March 2021, the District retained the Firm to investigate four separate matters related to the Review, involving EEO-related complaints raised by or on behalf of [REDACTED] (the “task order investigations”).<sup>30</sup> The Firm assigned an attorney-investigator who is not involved in the Review to conduct these investigations. The Firm will provide separate reports regarding the task order investigations as each investigation is completed.

**J. Significant Events During the Review**

Several significant events occurred during the Review.

**1. New Appointments to the Board of Directors**

On January 27, 2021, the Upper San Gabriel Valley Municipal Water District appointed a new representative to the Board, replacing Treviño, one of the Review Request Memo authors. On February 2, 2021, the Fullerton City Council appointed a new representative to the Board, replacing Ortega, the second of the three Review Request Memo authors. In February 2021, the third author, Ballin, who also is the Mayor of San Fernando, resigned her seat on the Board, and

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<sup>28</sup> Copies of the action item and Review Request Memo are enclosed as **Exhibit 1**.

<sup>29</sup> The Firm is woman-owned, with decades of experience providing employment law services to public and private California employers of all sizes. Our attorney-investigators regularly conduct workplace climate assessments and investigations of workplace complaints (including EEO, whistleblower, and workplace violence issues) involving employees at all levels.

<sup>30</sup> The Ethics Officer directed the Firm’s work on the task order investigations.

recommended that Ortega be appointed to replace her. On March 1, 2021, the San Fernando City Council appointed Ortega as its representative on the Board.

## **2. Media Interest**

On February 12, 2021, the Los Angeles Times published an article Adam Elmahrek authored with the headline, “‘They thought I was so low’: Women say they were harassed, bullied, ignored at powerful water agency.” In the article, Elmahrek included information obtained from the District through a California Public Records Act request and interviews with employees, including, Chavez, Grow, Lee King, and Mackey.

On February 23, 2021, KUCI 88.9 FM aired an episode of its “Ask a Leader” podcast during which host Claudia Shambaugh interviewed Chavez and Mackey.

On March 12, 2021, Shambaugh interviewed Mackey for the “Ask a Leader” podcast. The podcast aired on March 16, 2021.

On March 18, 2021, the Los Angeles Times published an article Elmahrek authored with the headline, “He was the king of water in the desert. His abusive reign revealed a troubling culture.” The article focused on Nash’s management style and suicide.

On May 15, 2021, Shambaugh interviewed Chavez and Mackey for the “Ask a Leader” podcast. The podcast aired on May 18, 2021.

## **3. Legislative Activity**

On February 17, 2021, California State Senator Henry Stern introduced Senate Bill 480 (“SB 480”), with AFSCME’s support. The bill would require the District to adopt rules relating to inappropriate conduct by Directors, officers, and employees. On June 3, 2021, the bill passed in the Senate, and moved on to the Assembly.<sup>31</sup>

On February 18, 2021, AFSCME called on the California Legislature’s Joint Legislative Audit Committee (“JLAC”) to review allegations District employees had raised at Board and OP&T Committee meetings in summer and fall 2020. On April 1, 2021, several California Legislators sent a letter to JLAC Chair Rudy Salas supporting an audit of the District’s personnel policies and practices. On June 17, 2021, AFSCME launched a digital campaign urging Legislators to support the audit. On June 30, 2021, JLAC authorized the audit.<sup>32</sup> That evening, the Los Angeles Times published an article Elmahrek authored with the headline, “State launches audit of sexual harassment policies at powerful Southern California water agency.”

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<sup>31</sup> As of the date of this Report, the bill had passed out of the Assembly Appropriations Committee on consent and was referred to the Assembly Floor.

<sup>32</sup> The California State Auditor’s Office will conduct the audit.

#### **4. Employee Petition**

On March 8, 2021, certain employees circulated a document entitled, “Petition from Metropolitan Water District Employees Focused on Solutions for a Better Future.” The petition expressed support for Kightlinger, and disagreement with Mackey’s complaints about the District, and recent negative media coverage about the District. The Board discussed the petition at subsequent meetings.<sup>33</sup>

#### **5. General Manager Recruitment**

On May 8, 2021, in closed-session, the Board selected Hagekhalil as the District’s new General Manager. On May 26, 2021, the Los Angeles Times published an article Sammy Roth authored with the headline, “As drought worsens, tensions erupt over control of SoCal’s largest water supplier.” In the article, Roth described the respective positions of Hagekhalil’s supporters and detractors, both on the Board and in the community, and included information about the Board’s narrow vote regarding whether to extend Hagekhalil a contract.

On June 8, 2021, the Board finalized Hagekhalil’s selection and voted to approve his contract. Subsequently, several media outlets reported on the Board’s action. For example, on June 9, 2021, the Orange County Register published an article Teri Sforza authored with the headline, “After rancorous meeting, Metropolitan Water District board hires new general manager.” In the article, Sforza described Directors as “bitterly divided,” and stated that nearly 50% of them abstained from the vote.

On June 21, 2021, KCRW host Steve Chiotakis’ “Greater LA” program focused on the District’s new General Manager. Chiotakis interviewed Hagekhalil regarding his ideas to ensure a reliable water supply, and Roth regarding his coverage of the General Manager selection. In the interview, Roth explained, “[Hagekhalil] kind of got swept up in this power struggle between these different factions [on the Board].”

### **III. THE REVIEW PROCESS**

#### **A. Scope of the Review**

The Review focused on the following issues as written in the Action Item that the Board approved on November 10, 2020:

1. 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;

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<sup>33</sup> [REDACTED] made an internal complaint against District employees who created and distributed the petition. [REDACTED] allegation is the subject of one of the task order investigations.

and (2) cases reported by claimants during meetings of Committee and Board members throughout 2020.

2. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
3. Degree of employees' fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
4. Compliance with best practices in these and related areas.<sup>34</sup>
5. 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; and (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

Our observations and recommendations in each of these areas are set forth below in **Section VI** below.<sup>35</sup>

#### **B. Impartiality**

The Firm exercised independence and discretion in conducting the Review. Although we worked closely with the Ethics Office on an employee survey and interview logistics, none of the employees in the Ethics Office attempted in any manner to influence or direct the outcome of the Review.

#### **C. Confidential Workplace Assessment**

On February 8, 2021, we sent a Confidential Workplace Assessment (the "Survey") to 1,854 District employees directly to their District email addresses.<sup>36</sup> The Survey initially closed

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<sup>34</sup> Our primary source of best practices in workplace investigations is the Association of Workplace Investigators "Guiding Principles for Conducting Workplace Investigations," which are available at [https://www.awi.org/page/Guiding\\_Principles](https://www.awi.org/page/Guiding_Principles).

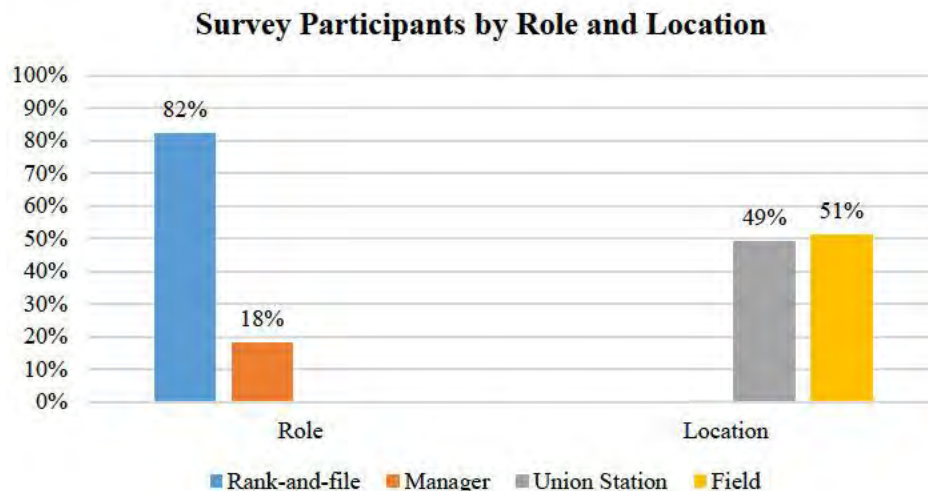
<sup>35</sup> We did not determine whether any individual violated the law, or acted in a manner inconsistent with the District's policies, procedures, or practices.

<sup>36</sup> The 1,854 employees who received the survey invitation included 1,785 regular, full-time employees, 49 annuitants, and 20 recurrent employees.

The Survey questions and a summary of responses are enclosed as **Exhibit 2**. Blank pages indicate text-only responses that, for confidentiality purposes, are not appropriate to provide in this Report. Question 15 was intended to provide a "Net Promoter Score." However, the numerical responses were inconsistent with text responses to other questions, which indicates that we did not phrase the question to achieve the intended result. Therefore, we did not

on February 19, 2021. Subsequently, the Board learned that work demands may have hindered participation. At the Board's request, we re-opened the Survey on February 25, 2021, and closed it on March 11, 2021.

Of the 1,854 employees who received the Survey invitation, 1,598 employees (86%) responded. The chart below provides demographic information about the Survey participants.



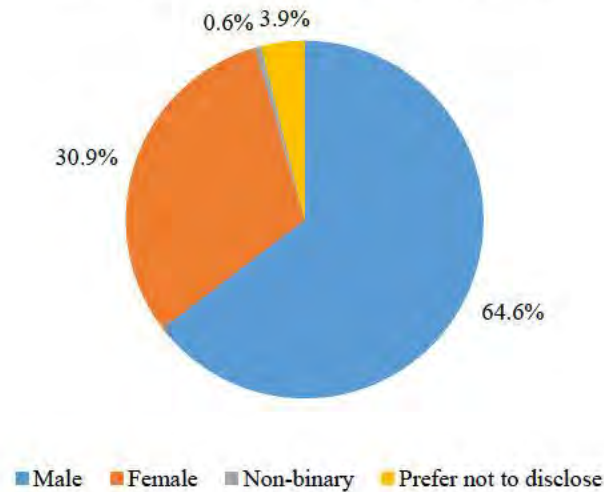
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rely on the data from Question 15. Removing the data from our analysis did not negatively affect the outcome of the Review.

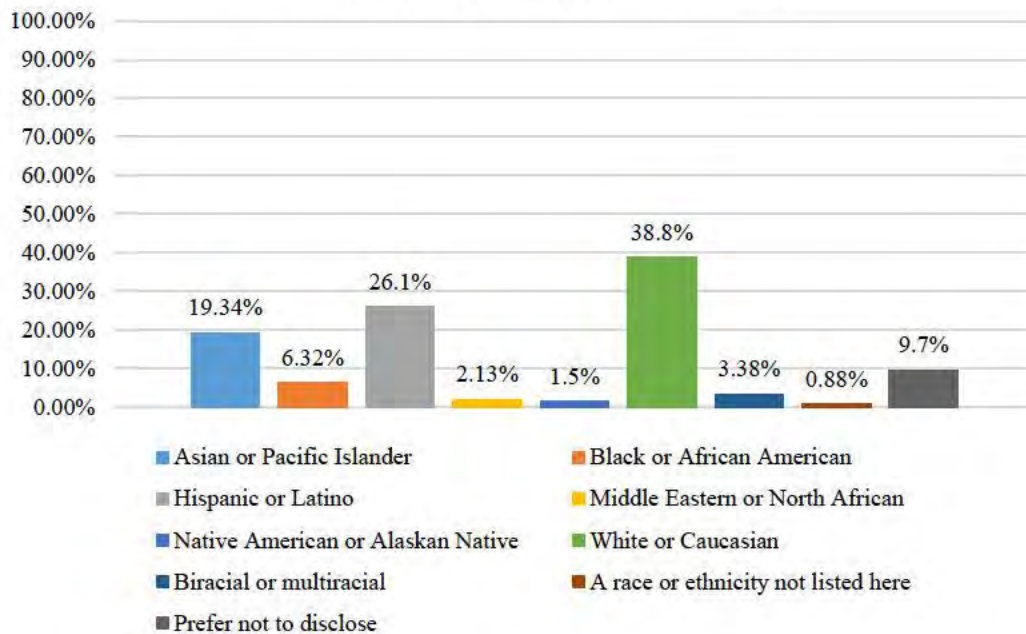
We initially sent the Survey with the title “Confidential Climate Assessment for Metropolitan Water District Employees.” We later changed the title to “Confidential Workplace Assessment for Metropolitan Water District Employees,” based on feedback that some employees did not complete the Survey because they misunderstood it to be related to the weather.

The survey tool we used, SurveyMonkey, sent a unique survey link to each email address to prevent employees from completing the survey more than once. SurveyMonkey also tracked whether the recipient completed the survey. We used that information to send email reminders to employees who had not yet responded. However, to ensure confidentiality, SurveyMonkey did not associate the unique link or email address with any of the survey responses. Therefore, although we can identify if a particular employee completed the survey, we cannot link responses to particular employees, unless the employee chose to include personally identifying information to schedule a confidential interview, or for some other reason.

### Survey Participants by Sex/Gender



### Survey Participants by Race/Ethnicity



Consistent with our representations to employees regarding confidentiality, in this Report we reference Survey responses only in aggregate form.

## **D. Interviews and Review of Documents and Other Evidence**

### **1. Interviews**

During the Review, we interviewed 194 individuals.<sup>37</sup> We advised every individual about the confidential nature of the Review, and the District's policy prohibiting retaliation.

In the Survey, employees could elect to participate in a confidential interview with one of the Firm's attorney-investigators. We also provided methods for employees to contact us directly to share their perspectives about working with the District. One hundred and eighty employees requested confidential interviews, either through the Survey or by contacting us directly. Of those employees, 124 (69%) actually participated in interviews. We completed our last Survey-related interview on June 15, 2021.

On May 12, 2021, at the request of the Board, the Firm invited Directors with relevant information to schedule an interview. We interviewed 13 Directors during the Review.<sup>38</sup>

In addition to interviews with the 124 employees and 11 Directors who requested and scheduled interviews, we interviewed 57 employees and two Directors whom we identified as subject matter experts or individuals likely to be most knowledgeable about a group or location. We interviewed at least one individual from each group, each section within the WSO group, and each pumping plant and water treatment plant. We also interviewed all but one of the employees designated in January 2021 as ERG or bargaining unit representatives on the DE&I Council.

Several District employees were represented during their interviews, either by attorneys or union representatives.<sup>39</sup> Some individuals we identified for interview declined to participate.

The charts below provide demographic information about the interviewees.

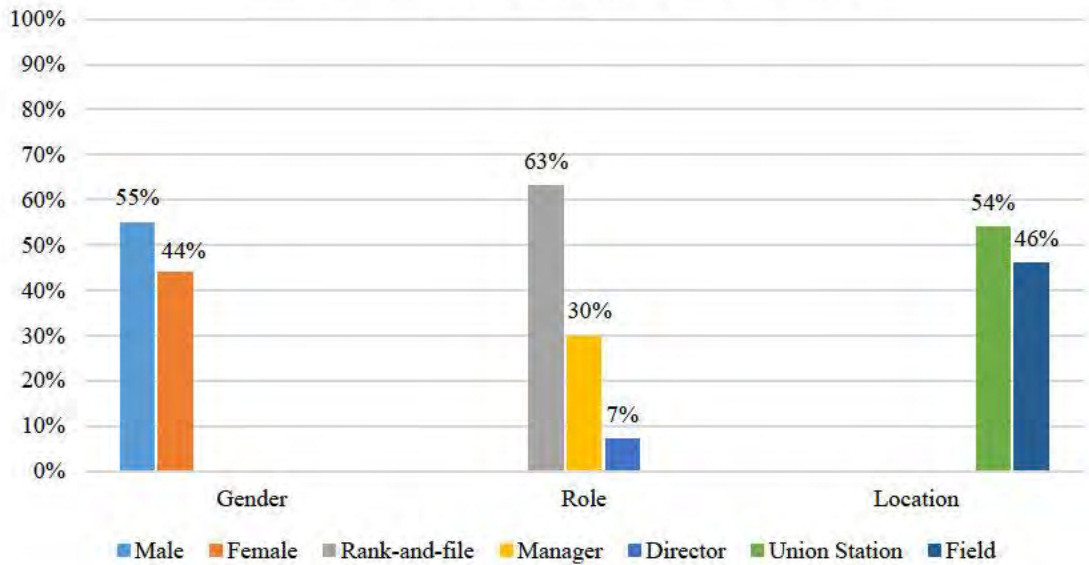
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<sup>37</sup> Due to COVID-19, we conducted all interviews via telephone or videoconference. Consistent with our representations to employees regarding confidentiality, we do not provide a list of the interviewees in this Report.

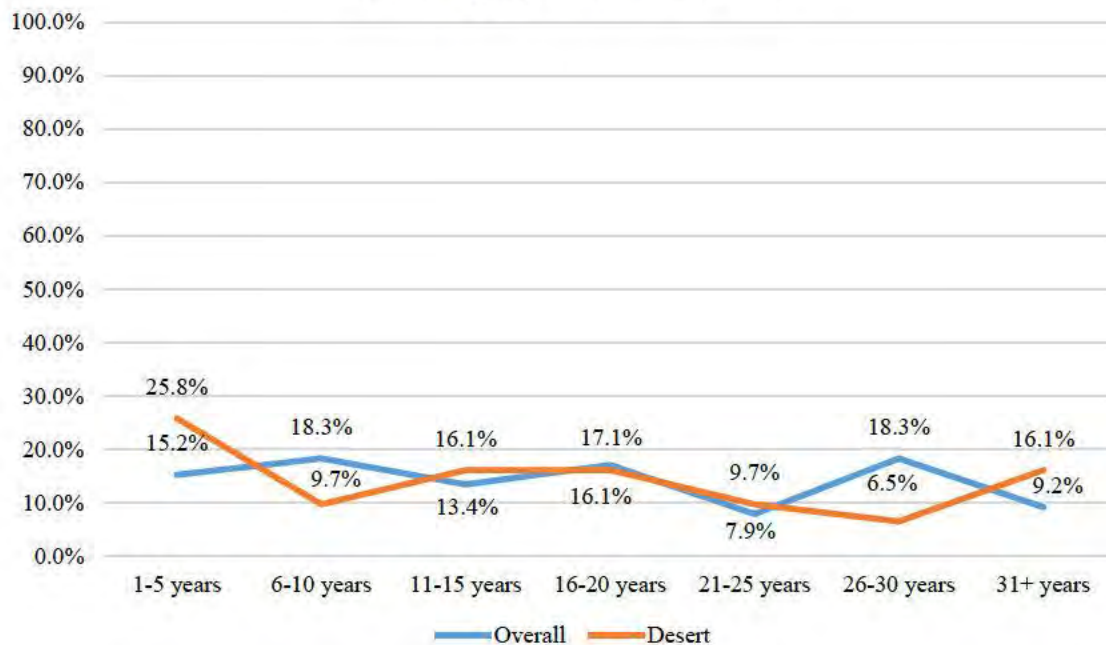
<sup>38</sup> Eleven of the 13 Directors we interviewed requested an interview. The other two, the Chairwoman of the Board and the OP&T Committee Chairman, participated at our request.

<sup>39</sup> Some of the District managers we identified for interviews (including certain employees in Legal) participated only on the condition of the District providing legal representation during their interview.

### Interviewees by Gender, Role, and Location



### Years Employed with the District



## 2. Documents

We requested that the District provide to us numerous documents to facilitate the Review. Due in part to the workloads of the employees responsible for assisting us, we experienced significant delays in obtaining certain documents.

Among the documents we requested were all of the District's EEO case files from 2015 to present. We received and reviewed 75 case files.<sup>40</sup> Consistent with our representations to employees regarding confidentiality, we do not provide details of the cases in this Report. Our analysis below generally is presented in aggregate form.

We invited interviewees to provide documents and other evidence for consideration during the Review. In total, we examined over 24,000 pages of documents provided by the District and interviewees.<sup>41</sup>

### **3. Other Evidence**

We reviewed several hours of audio and video evidence, including public comments from Board and committee meetings and the "Ask a Leader" podcasts.

On July 6, 2021, Patricio and Salinas accompanied attorney-investigator Brooke Kozak on a tour of the Gene, Intake, Iron Mountain, and Eagle Mountain pumping plants. On July 7, 2021, Yamasaki and Salinas accompanied Kozak on a tour of the Weymouth water treatment plant and the Water Quality Laboratory at La Verne.

## **IV. ANALYSIS OF THE DISTRICT'S INVESTIGATION AND RESOLUTION OF EEO ISSUES RAISED BY GINA CHAVEZ, MIRANDA GROW, AND LEE KING**

We requested and reviewed all EEO case files for complaints submitted by Chavez, Grow, and Lee King during their employment with the District. Our analysis of the District's response to their complaints is summarized below.<sup>42</sup>

### **A. Gina Chavez**

On or about October 12, 2012, Chavez submitted an internal EEO complaint against [REDACTED], alleging discrimination and harassment based on pregnancy and gender. Alicia King investigated the complaint, and completed an investigation report on February 12, 2013. Although Alicia King determined that some of the conduct Chavez alleged occurred, Alicia King found there was "insufficient evidence" to support any violation of District policy. We have some concerns about Alicia King's use of terminology in her report, but her findings were well-reasoned and supported by evidence. In addition, although Chavez complained that Alicia King did not interview all of the individuals Chavez identified as witnesses, it appears Alicia King interviewed

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<sup>40</sup> We also requested and reviewed the EEO case files regarding Chavez's 2012 and 2013 complaints, and Grow's 2010 complaint. Information from these cases informed our observations and recommendations in this Report, but we did not include these cases in our quantitative analysis of EEO case files from 2015 to present.

<sup>41</sup> A list of key documents reviewed is enclosed as **Exhibit 3**.

<sup>42</sup> As stated above, we do not provide details about EEO cases in this Report where confidentiality was expected. However, Chavez, Grow, and Lee King discussed their experiences in public comments to the Board and the OP&T Committee and in the media, which apparently prompted the Board's interest in information about the District's response in their specific cases.

all witnesses with relevant information and used appropriate discretion in declining to interview witnesses who likely did not have relevant information.

Shortly after submitting the complaint, Chavez requested [REDACTED]. The District granted her request, and transferred Chavez to a position at Eagle Mountain.

On October 17, 2013, Chavez's [REDACTED], reported a retaliation complaint on Chavez's behalf. Alicia King investigated the complaint and completed an investigation report on January 22, 2014. In the report, Alicia King found she was "unable to conclude" that the conduct alleged occurred. Although Chavez declined to participate in the investigation, it appears Alicia King thoroughly investigated the complaint.

On December 12, 2018, Chavez submitted an internal complaint against [REDACTED] claiming sexual harassment. Stacy Sullivan, with law firm Liebert Cassidy Whitmore, investigated the complaint and submitted an investigation report dated September 5, 2019. Sullivan determined that the allegations were "sustained in part," and otherwise "not sustained."<sup>43</sup>

According to Chavez, she informed Sullivan about a co-worker who had directly observed the conduct Chavez alleged. However, Sullivan made findings without interviewing the witness. Later, when Sullivan interviewed Chavez as a witness in a different investigation, Chavez asked her why she did not interview the witness Chavez identified. According to Chavez, who provided a recording of the conversation, Sullivan stated that the District instructed her not to interview the witness. However, the recording of the interview does not support Chavez's assertion.

Upon review of the case file for Chavez's 2018 EEO complaint, we determined that after Chavez asked Sullivan about her failure to interview the witness, Sullivan interviewed Chavez's witness. On November 24, 2020, Sullivan submitted an addendum to her investigation report, explaining that the information she obtained from the witness did not change her original findings. However, we did not find any evidence that the District informed Chavez of these subsequent events.

On October 29, 2020, [REDACTED] reported to Patricio that one of Chavez's co-workers caused Chavez to feel concerned for her personal safety. The District retained Manny Tau, Psy.D., CTM to conduct a threat assessment. On November 8, 2020, Chavez elected to be placed on voluntary paid administrative leave ("PAL"), pending the results of the assessment. On January 11, 2021, Dr. Tau submitted a consultation report in which he assessed the respondent to be a "low" threat potential of targeted violence upon Chavez. He further found that Chavez's allegation about her co-worker creating a physical danger to her safety was "unfounded (not based on fact) and unsubstantiated (without evidence)."

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<sup>43</sup> In the report, Sullivan defined "sustained" as, "The alleged conduct occurred," and "not sustained" as, "There is insufficient evidence to determine whether the alleged conduct occurred."

On February 3, 2021, the District notified Chavez of the assessment results. [REDACTED]

**B. Miranda Grow**

On or about November 8, 2010, Grow submitted an internal EEO complaint against a co-worker, claiming “sexual/inappropriate touching.” At the time, Grow was a Pre-Apprentice at Diemer. Barbara Dalton, with Public Interest Investigations, Inc., investigated the complaint, and submitted an investigation report on December 31, 2010. Dalton substantiated the allegations, and the District disciplined the respondent.

In 2013, Grow left the Apprenticeship program and transferred to Mills as a Water Treatment Plant Operator. In late 2019, the respondent in Grow’s 2010 case transferred to Mills. Grow complained that she felt unsafe. When she did not receive a satisfactory response, she left work on voluntary unpaid administrative leave. She remains on leave as of the date of this Report.

**C. Lee King**

On or about February 11, 2019, Lee King submitted an internal EEO complaint against [REDACTED] claiming sexual harassment. The District retained Sullivan to investigate the complaint.

Around the same time, Lee King sent a nine-page letter to the Board, describing various concerns related to their experience working with the District, and the general work environment. The District provided the letter to Sullivan for investigation along with the EEO complaint.

On October 18, 2019, Sullivan submitted an investigation report, in which she substantiated some, but not all, of Lee King’s allegations. She also reached the legal conclusion that the respondent “did not subject [Lee] King to a hostile work environment[.]” Due to miscommunication, Sullivan did not investigate the concerns Lee King raised in the letter to the Board.<sup>46</sup>

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<sup>44</sup> On or about February 4, 2021, [REDACTED] submitted an EEO complaint claiming that the District retaliated against her for [REDACTED]. The complaint is within the scope of one of the task order investigations, which are in progress as of the date of this Report.

<sup>45</sup> Heider defined “founded” as, “When there is sufficient evidence that the conduct alleged occurred,” and “unsubstantiated” as, “When there is insufficient evidence to determine whether the conduct alleged actually occurred.”

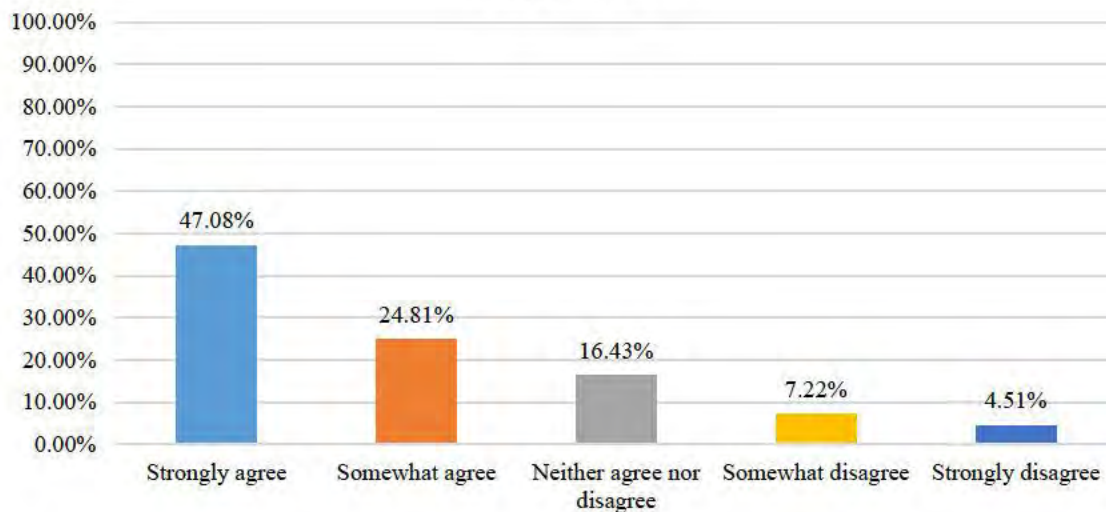
<sup>46</sup> The allegations in Lee King’s letter to the Board are within the scope of one of the task order investigations, which are in progress as of the date of this Report.

## V. THE DISTRICT'S CURRENT WORKING ENVIRONMENT

In the Survey, we asked several questions related to the District's working environment and individual experiences with EEO Issues.

Overall, Survey participants provided the highest favorable score in response to whether the District provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees. In response, 72% of participants answered favorably (either "strongly agree" or "somewhat agree"). However, 28% answered unfavorably ("neither agree nor disagree," "somewhat disagree," or "strongly disagree").

### **"The District provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees."**

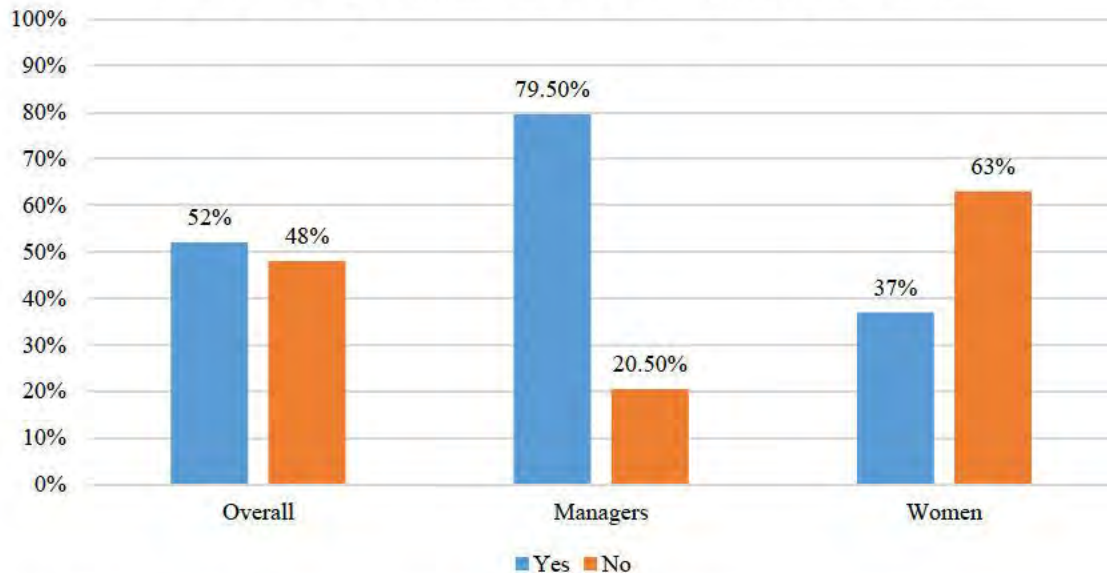


The interviews we conducted during the Survey revealed some trends about the District's working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community.<sup>47</sup>

We discussed with 84 interviewees whether the working environment is safe and respectful for women. The chart below illustrates that 52% of interviewees answered favorably. Notably, managers responded more favorably (79.5%) than rank-and-file employees, and only 33% of female employees who work at desert facilities answered favorably.

<sup>47</sup> Persons who requested interviews shared information that they considered relevant to the Review. As a result, unlike the Survey, in which all participants answered the same set of questions, we discussed different topics with different interviewees. For that reason, we caution that although interview data is instructive, it is not necessarily representative.

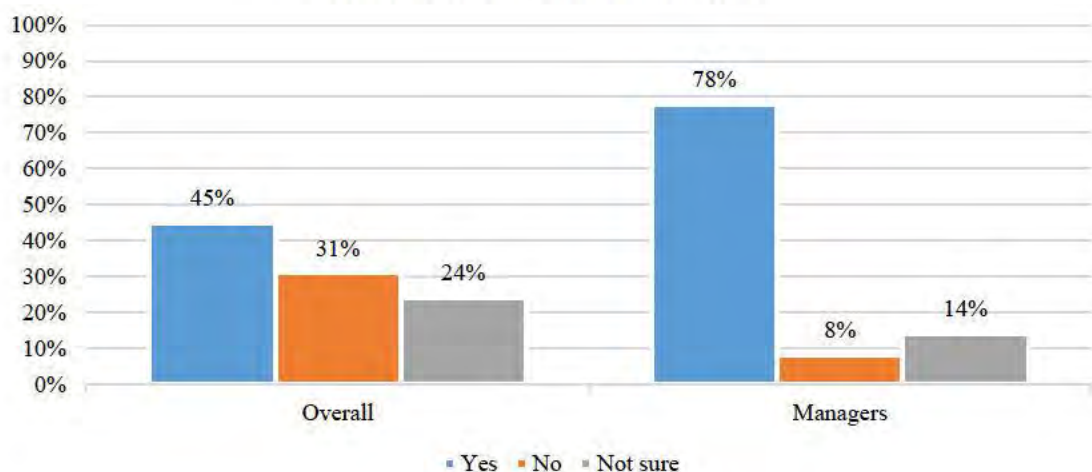
**“Is the working environment safe and respectful for women?”**



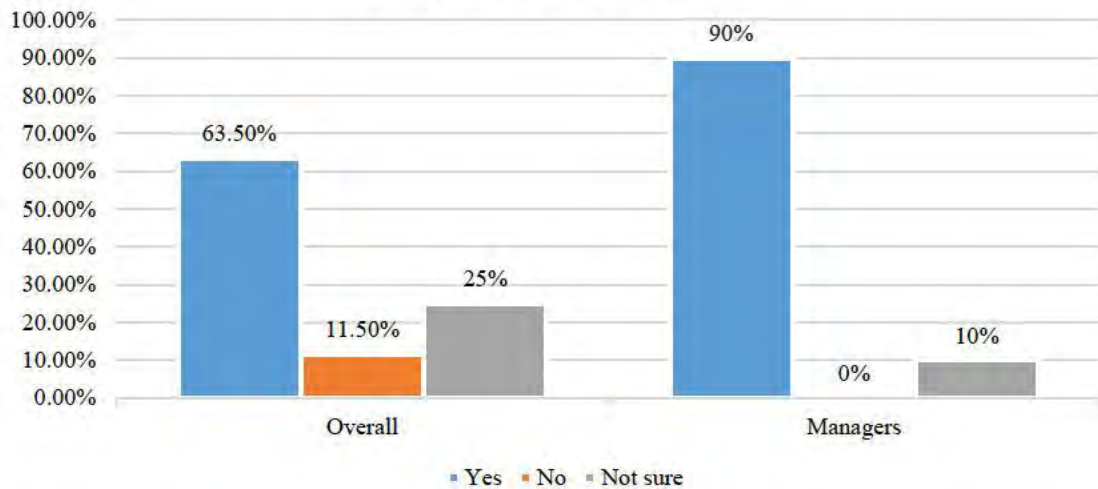
Many female Survey participants and interviewees shared stories of various “microaggressions” they routinely experience in the workplace. For example, they described being regularly interrupted or talked over in meetings, having their ideas dismissed, being assigned administrative tasks that are not assigned to their male counterparts, and being described using gendered-language (e.g., “emotional”) when they raised objections. As a result, these women do not feel safe or comfortable speaking up.

Similarly, managers also responded more favorably than other interviewees when asked whether the working environment is safe and respectful for racial and ethnic minorities and LGBTQ+ employees.

**“Is the working environment safe and respectful for racial and ethnic minorities?”**

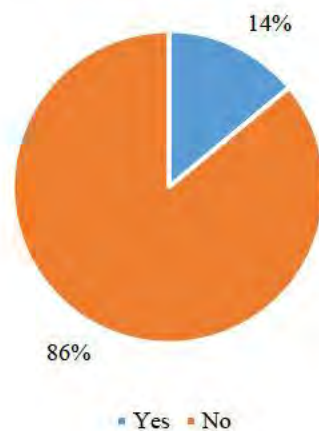


**“Is the working environment safe and respectful for LGBTQ+ employees?”**



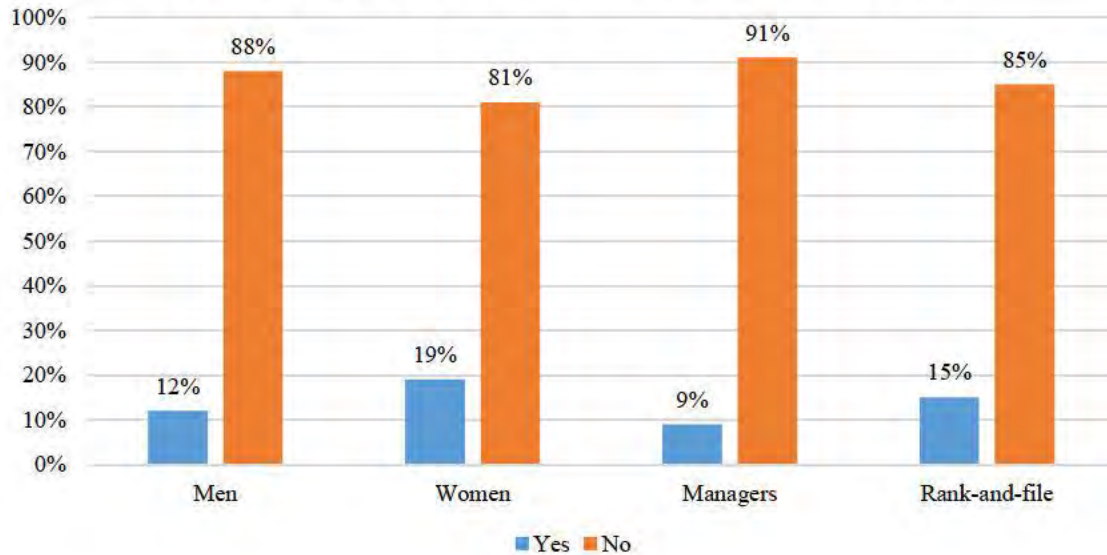
In addition to questions about the working environment, we also surveyed employees about their experiences with EEO Issues. Only 14% of Survey participants indicated they had experienced unfair treatment based on a protected characteristic in the last three years.

**“In the last 3 years, have you had any experiences at the District during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”**

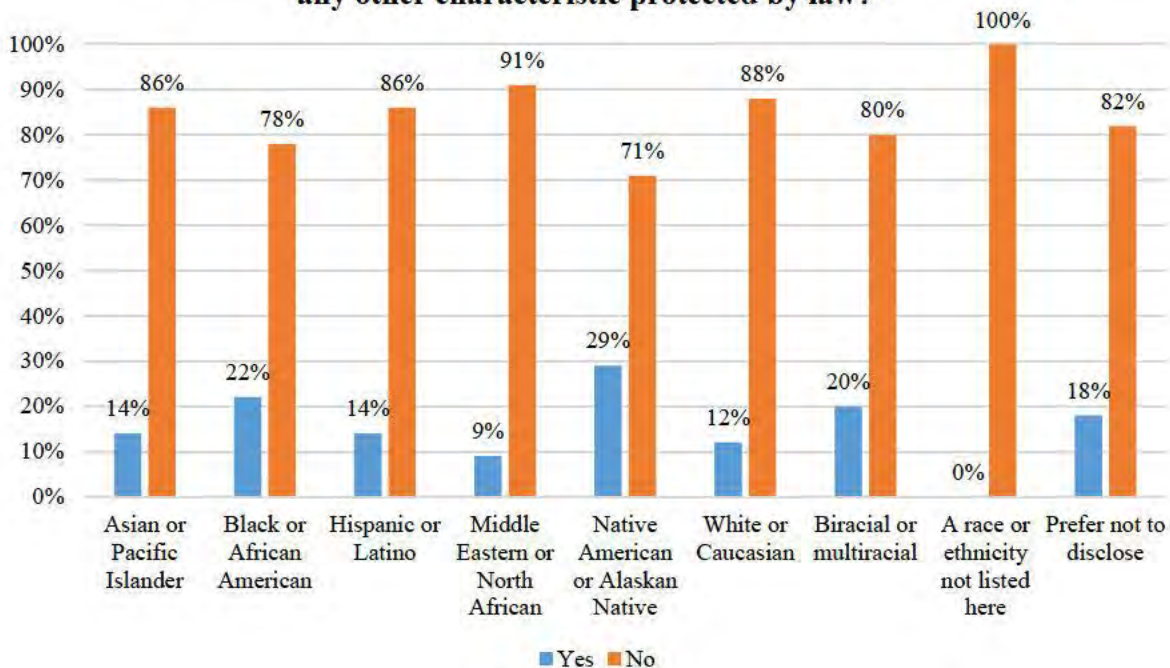


Managers were less likely to perceive unfair treatment than rank-and-file employees, and underrepresented groups (Native American/Alaskan Native and Black employees, in particular) were more likely to perceive unfair treatment.

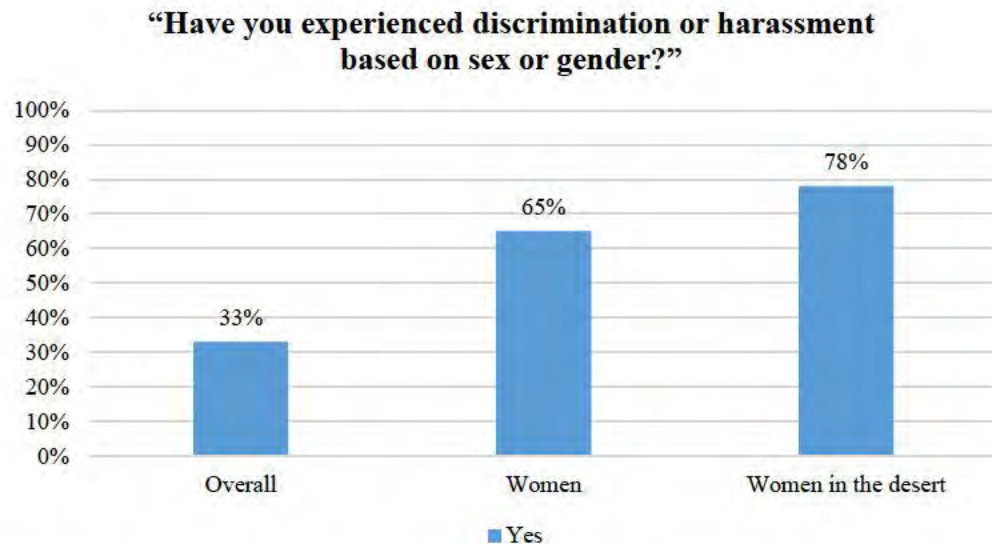
**“In the last 3 years, have you had any experiences at the District during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”**



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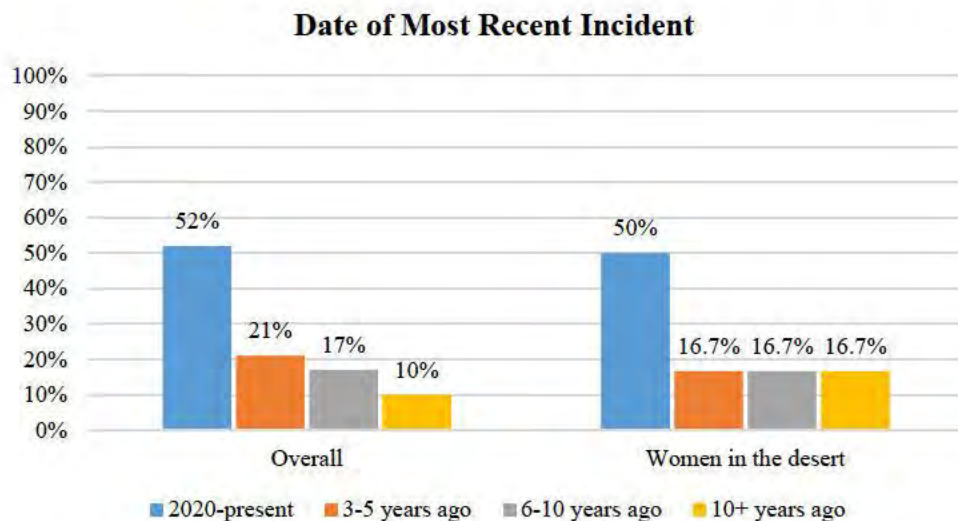


We discussed with 104 interviewees whether they had experienced discrimination or harassment based on their sex and/or gender. The chart below illustrates that female employees who work at desert facilities are more than twice as likely to identify as having experienced such conduct than other interviewees.



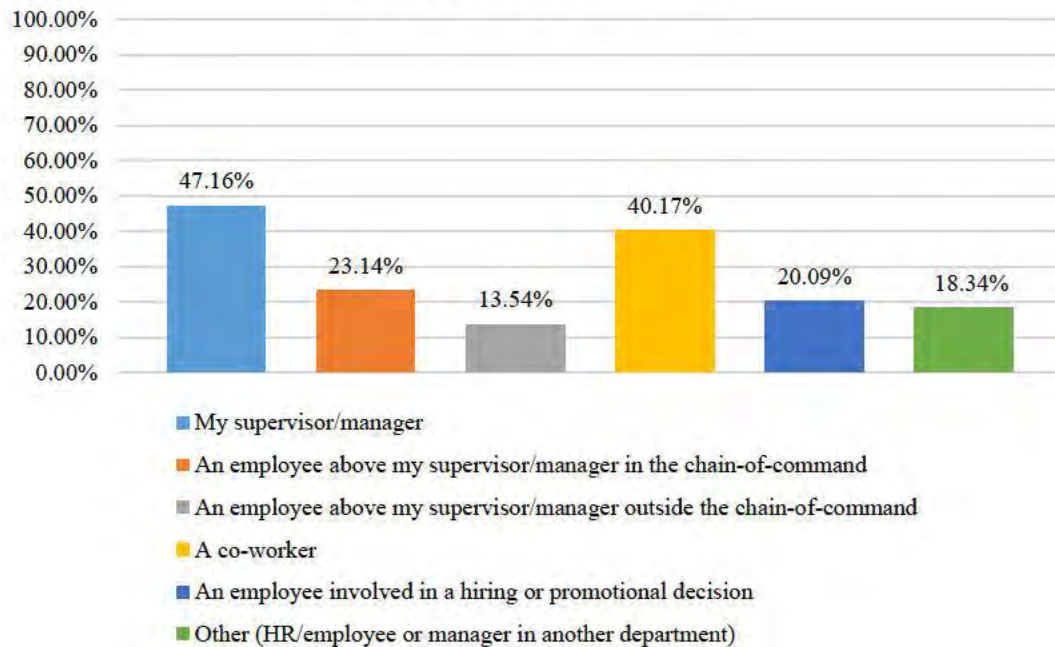
Thirty-three interviewees shared their personal experiences with discrimination and/or harassment at the District based on their race or ethnicity. Although the Board directed us to examine EEO Issues experienced by women, racial and ethnic minorities, and members of the LGBTQ+ community, several interviewees stated that they have experienced discrimination and/or harassment based on their age, disability, and/or marital/parental status.

The chart below illustrates the timing of interviewees’ most recent experiences with EEO Issues at the District. Although female employees who work at desert facilities reported recent incidents at a percentage similar to other interviewees, they also reported a higher percentage of incidents that occurred more than 10 years ago.



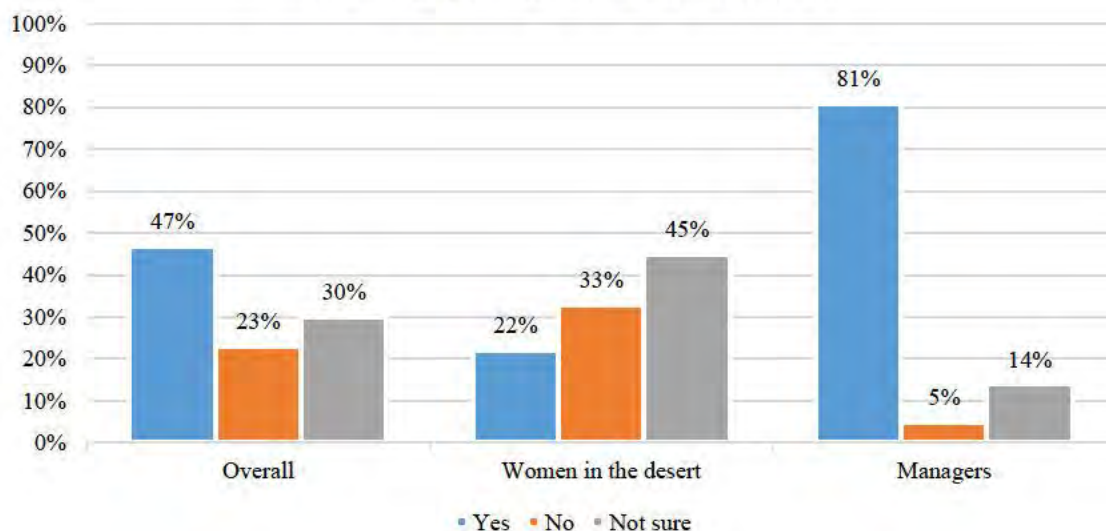
Slightly less than 50% of Survey participants who stated they had experienced unfair treatment named their manager as the offender. Approximately 40% of participants attributed the mistreatment to co-workers.

### “Who treated you unfairly?”

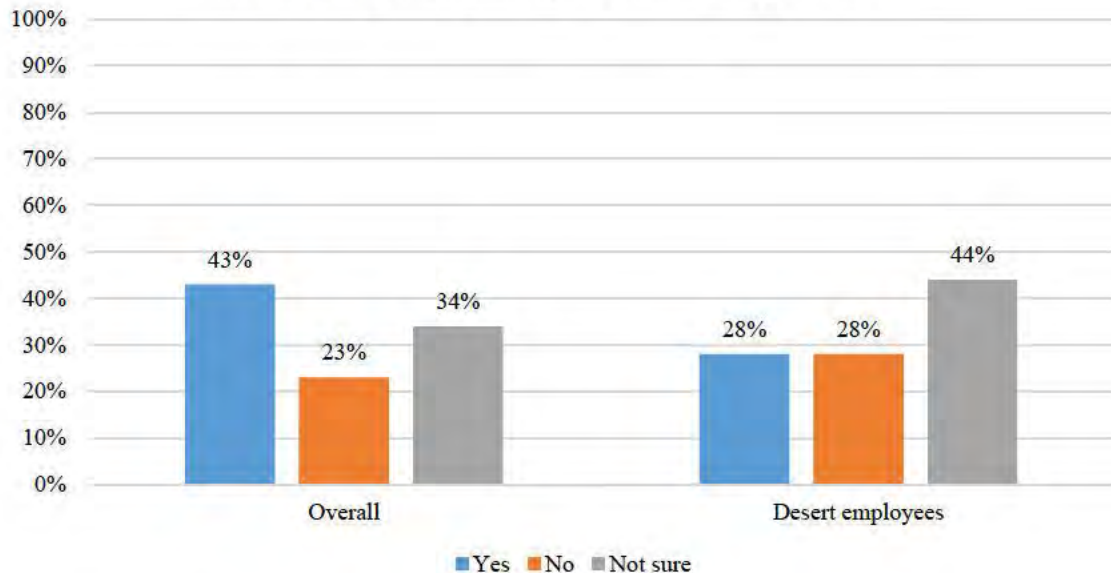


Approximately 47% of interviewees perceive that the District’s working environment is improving, and 43% perceive that new managers at the desert facilities are committed to making improvements. The charts below illustrate that managers are more optimistic than rank-and-file employees, and 78% of female employees at desert facilities are less certain of positive developments in this area.

### “Are things getting better at the District?”



**“Are the new desert managers making improvements?”**



Based on the Review data, we made several observations regarding the District’s working environment.

- A. **Currently, the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community. However, that has not been the case historically, and the District has significant work to do.**

Approximately 72% of Survey participants agreed that the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community. Only a minority of employees (14%) believe they have experienced unfair treatment in the last three years based on a protected characteristic.

However, the historical culture at the District, particularly at the desert facilities, did not consistently reflect equal employment opportunities for women, racial and ethnic minorities, and/or members of the LGBTQ+ community. We heard examples of past District managers tolerating, and in some cases, encouraging, conduct in violation of the District’s EEO policies. Female employees working in non-traditional roles, including in trade classifications and other positions at desert facilities, were expected to adjust their conduct to “fit in” with the male employees, and the District did not take appropriate steps to create an environment in which women would be accepted and treated with dignity and respect.

The District is working to reverse this ethos. For example, the four management employees with current oversight of the desert facilities at the unit level or above, including Yamasaki, Patricio, and Assistant Unit Managers Justin Davis and Scott McMullen, assumed their roles after Nash’s removal. They all are driving new expectations for EEO compliance and accountability. We also found examples of the District taking corrective action against managers who engaged in

misconduct, or failed to report employee misconduct. Additionally, HR's Strategic Partners are building relationships with managers and becoming trusted resources and coaches, and managers are responding positively.

A minority of employees still struggle under managers with poor management skills, or with co-workers who have not adapted to changing social norms in the workplace. HR's Training Unit has partnered with WSO managers, the HR Strategic Partners, and Employee Relations to provide high-quality training to improve the leadership skills of new managers. Additionally, although the DE&I Council currently lacks expertise in DE&I issues to make rapid progress, it has the potential to effect sustained, positive change in the organization.

**B. The District's working environment varies by location and group.**

The District's working environment is perceived differently by employees who work at certain locations and/or in certain groups.

For instance, the Survey revealed that most (86%) of District employees do not believe they have experienced unfair treatment in the last three years based on a protected characteristic. Female employees at desert facilities (33%) and water treatment plants (35%) are more likely to perceive unfair treatment than female employees at Union Station (18%).

Of the 223 Survey participants who responded that they have experienced unfair treatment at the District, 60 (27%) requested a confidential interview with us. Relative to the total District employee population, we interviewed disproportionately more females and individuals working at desert facilities. Based on recent media coverage regarding the District's working environment for women at desert facilities, we expected this result. Also, a significant number of female employees in the Engineering group and employees (both male and female) in WSO's Operations Support Services and Water Treatment sections complained of unfair treatment in their working environments.

Interviewees reported that there is a perception among some field employees that profanity "goes with the territory," which is not necessarily appropriate in a working environment. Field employees also appear more reluctant to change their behavior, even with the training provided by the District. This is an area in which employee accountability is critical.

The employee demographics at most of the desert facilities pose additional challenges. These locations generally operate with small teams comprised of predominantly White, male, heterosexual, cisgender employees. In most cases, a woman, LGBTQ+, and/or racial or ethnic minority joining the team is an "other" or an "only," which can be an isolating experience. In addition, these employees are physically isolated in a remote area, where their co-workers also are neighbors and part of the social structure. These factors understandably make it more difficult for employees in these locations to report misconduct.

The District's numerous locations also appear to foster a "town vs. desert" mentality for some employees. This attitude is understandable, particularly considering the significant challenges that employees at desert facilities face. Some employees at desert facilities indicated a

desire to connect with employees at other desert facilities to receive resources and support for field-specific cultural issues.

**C. Some employees remain negatively affected by poor past management.**

Unfortunately, some employees experienced extreme examples of unacceptable management in the past, which is well-publicized. Some of these employees are having difficulty moving forward and trusting new managers. They also are having difficulty recognizing and appreciating positive developments in the District's culture.

Responsibility for the working environment starts at the top. The District's new General Manager, Hagekhalil, has a unique opportunity to remedy this situation by recognizing past mistakes in responding to EEO Issues, and clearly communicating to all District employees his expectations for appropriate workplace conduct.

**VI. SUMMARY OF RECOMMENDATIONS**

Although the District appears to be moving in the right direction, there still is much work to be done. We summarize below our observations and recommendations based on the Review data.

**A. Recommendations Regarding the District's Prevention and Resolution of EEO-Related Discrimination, Harassment, and Retaliation Claims**

The District is responsible for preventing EEO Issues, and responding appropriately to conduct that may violate its EEO policies. We recommend that the District take the steps outlined below to improve its practices in these areas.

**1. Prevention of EEO Issues**

To effectively prevent EEO Issues, the District must promote a positive working environment, effectively manage employee performance, and provide sufficient resources to the EEO Office.

**a. Promote a Positive Working Environment**

**Update current EEO-related policies to reflect best practices.**

The District's Operating Policy H-07 ("Equal Employment Opportunity") and Operating Policy H-13 ("Sexual Harassment Prohibition Policy") are out-of-date, and do not contain certain key provisions. For instance, H-07 does not list all of the characteristics protected by law (e.g., political activities or affiliation), focuses on legal compliance rather than setting a higher standard to encourage the prevention of EEO Issues, and does not accurately describe the District's current structure related to the EEO Office. Similarly, H-13 addresses only sexual harassment prevention, and not the prevention of other forms of harassment.

If the District modifies H-07 to include a more detailed discussion of harassment (including harassment based on gender and sexual orientation, which currently are not addressed in H-13), then H-13 could be eliminated.

In addition, H-07 should contain a more robust discussion of retaliation prevention, and more expressly require managers to contact the EEO Office immediately if they become aware of a potential EEO Issue.

**Implement a policy to address abusive conduct, even if not EEO-related.**

To our knowledge, none of the District's current policies specifically address the prohibition of "abusive conduct," as defined by California Government Code section 12950.1, which includes repeated infliction of verbal abuse, the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of an employee's work performance. This conduct, even if not based on a protected characteristic covered by the law, can negatively affect the working environment and lead to EEO Issues.

The District may implement a stand-alone policy, or revise Operating Policy H-04 ("Violence in the Workplace") to incorporate abusive conduct.

**Continue promoting and hiring individuals for management positions who demonstrate emotional intelligence and the commitment to creating and maintaining a positive and respectful work environment.**

Managers set the tone in terms of the working environment. When filling management positions, the District should ensure successful candidates embrace their EEO-related responsibilities. For example, even if a manager disputes the merits of an employee's complaint, they should listen actively to the employee and follow the appropriate internal procedures. Employee complaints can provide opportunities for managers to develop more trusting relationships with their teams, and demonstrate their commitment to EEO compliance.

To provide managers with the tools they need in these areas, the District should consider requiring successful completion of its Leadership Academy as a condition of completing probation in management positions.

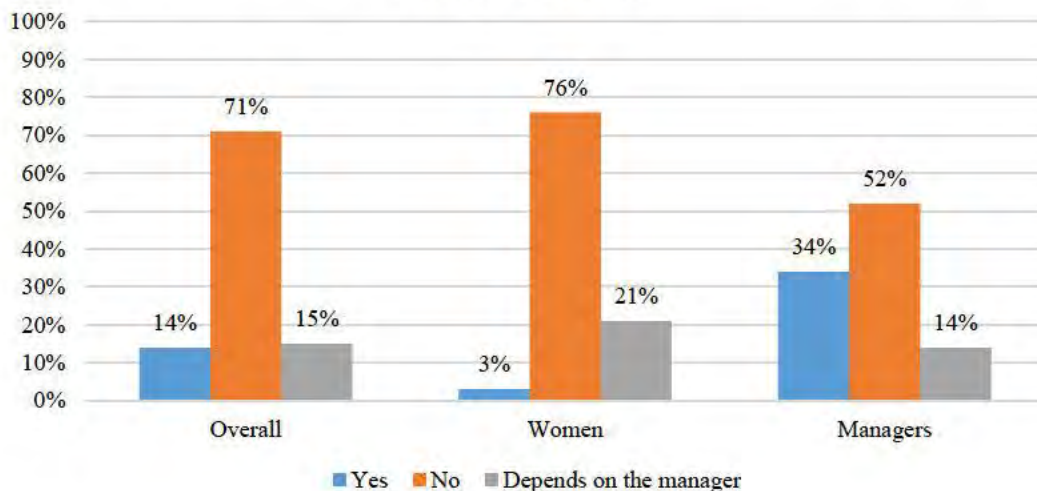
**Hold managers accountable for modeling professional and respectful behavior, and demanding the same of their teams.**

It is critical for managers to reinforce their expectations regularly regarding appropriate workplace conduct, and to ensure their conduct is consistent with District policy.

However, a majority of interviewees, including managers, perceive that managers do not clearly articulate their expectations regarding respectful workplace conduct. Notably, even higher percentages of interviewees who stated that they have experienced retaliation for raising a

workplace concern (86.2%), and female employees at desert facilities (87.5%), agree with this perception.

**“Do managers clearly articulate expectations about respectful workplace conduct?”**



For example, some individuals tolerate or encourage the use of inappropriate terms for equipment and profanity. We learned during the Review that some employees use equipment called “dykes.” The term “dyke” is the name commonly used when referring to diagonal cutting pliers (“side cutters” or “diagonal cutters”) electricians use to cut wire. This term is used industry-wide, and is not a District-specific term.<sup>48</sup> That said, the District should discourage employees from using this term, because of its alternative derogatory meaning.<sup>49</sup>

A minority of District employees still embrace outdated gender and social beliefs. For example:

- A Black female employee told us that an “older, White” male co-worker told her, “I’ve never been around Negroes before.” She explained, “We don’t use that word anymore.”
- A White male employee told us, “[District employees have] formed little associations for every culture. But you can’t have one if you’re Caucasian. It’s turned into, like, you’re bad if you’re White.”
- A manager told us that he wanted to “see things return to the way things were” when managers could ask candidates questions including, “Are you

<sup>48</sup> Indeed, our search for “dykes” on Amazon.com generated 398 results for diagonal cutting pliers.

<sup>49</sup> The term “dyke” is a slang term that “originated as a homophobic and misogynistic slur for a masculine, butch, or androgynous girl or woman.” (Source: [www.urbandictionary.com](http://www.urbandictionary.com))

married?” and, “Are you Christian?” because he “wanted guys who would fit in.”

- A Latino male employee told us, “I drop an f-bomb now and then. I know I shouldn’t. But that’s how we talk, as real men in the field.”

Some employees are outspoken in their criticism of working with particular groups of employees. For example:

- A Black male employee told us that a co-worker made comments to him about going “down to the border to shoot illegals” and “shooting Black people in the head if they’re Democrats.”<sup>50</sup>
- On June 17, 2020, a transgender employee sent a work-related email to several co-workers with a rainbow Pride fist in their signature block. An employee who received the email replied to all, “DO NOT EVER AGAIN send an email to me with ANY Political/Activist symbols, quotes, or ANY personal ideals and beliefs that you promote or advocate... QUIT SHOVING IT DOWN MY THROAT!”<sup>51</sup>

When managers fail to intervene and correct demeaning language, disparate treatment, hostility, and other inappropriate conduct, they are contributing to, and even worsening, the problem. The District should focus on selecting managers who will interrupt these behaviors, and then hold the managers accountable when they fail to do so.

Managers also can model respectful behavior by using more inclusive language (e.g., “parental leave” instead of “maternity leave”; “journeyperson” instead of “journeyman”; and “spouse” or “partner” instead of “husband” or “wife”).

**Require District Leadership to visit field locations on a regular basis, and facilitate town-hall-like events to solicit feedback and input from employees.**

There is a significant gap between what managers believe is happening in the workplace, and employees’ actual experiences. Part of the reason for the disconnect between the managers’ perception and the field employees’ reality is the rarity of senior management presence at field locations. During the Review, field employees consistently expressed a desire for District Leadership to be more present at field locations.

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<sup>50</sup> An external investigator investigated these and other allegations. The investigator substantiated many of the factual allegations, but determined that the conduct did not violate District policy. However, Legal referred the matter to Employee Relations to address.

<sup>51</sup> On July 6, 2020, Kightlinger issued a memorandum to all District employees regarding, “Correspondence Standards and Use of Electronic Signature Standard,” announcing parameters limiting the information that may be included in email signature blocks.

Although COVID-19 has complicated visits to field locations, several Survey participants stated that senior management's lack of direct interaction with them contributes to field employees feeling isolated and unseen. Regular field visits are critical to continuing to build trust between District Leadership and field employees. These visits allow District Leadership to have further dialogue about the District's culture and working environment in an open, professional, and constructive manner.

**Continue to enhance the District's current EEO training program.**

California employers must provide regular EEO training to all employees. To meet its obligations in this area, the District's training materials should be up-to-date, and reflect current best practices. Several employees told us that the District's harassment prevention training is delivered via a computer module, and it is not uncommon for employees to get coffee, chat with co-workers, or check email while the program is running. The most impactful training programs use role plays and scenarios to communicate concepts in an entertaining and understandable manner, and are delivered in a "live" format (even if by webinar) to allow participants to ask questions in real-time.

We reviewed the District's "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training launched earlier this year. The training contains four modules: "Overcoming Unconscious Bias," "Embracing Diversity and Inclusion," "Preventing Workplace Harassment," and "Standing Up to Bullying." Although the training is a computer module, it is well done. The program requires frequent interaction to keep the viewer engaged, and presents a solid overview of these concepts.

We are pleased that the program addresses "sex stereotyping," which is relevant to the concerns expressed by Chavez, Grow, and Lee King regarding female employees in trade classifications.<sup>52</sup> An even stronger program would include customized content providing practical guidance about how to report concerns, rather than generic content such as, "Report harassment to a senior manager or other appropriate person."

We also are pleased that the bullying module includes bystander intervention content. Bystander intervention is one of the most important aspects of an EEO training program. Chavez, Grow, and Lee King all described situations in which other District employees observed their mistreatment, but failed to take any action. The District's EEO case files and information provided by interviewees also revealed numerous instances of EEO complainants being subjected to bullying or other abusive conduct in group settings, without any intervention.

Generally, the "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training was well-received by employees. However, several employees told us that

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<sup>52</sup> Several male employees informed us that female employees in the trade classifications are not as capable of certain tasks because men are stronger than women. For instance, these employees perceive difficulty lifting heavy objects as a sex/gender issue, and not a safety issue, which indicates that the messages in the training did not resonate with everyone.

although they understood the concept of, “When bullying shows up, speak up,” they wanted more practical guidance on how to do so.

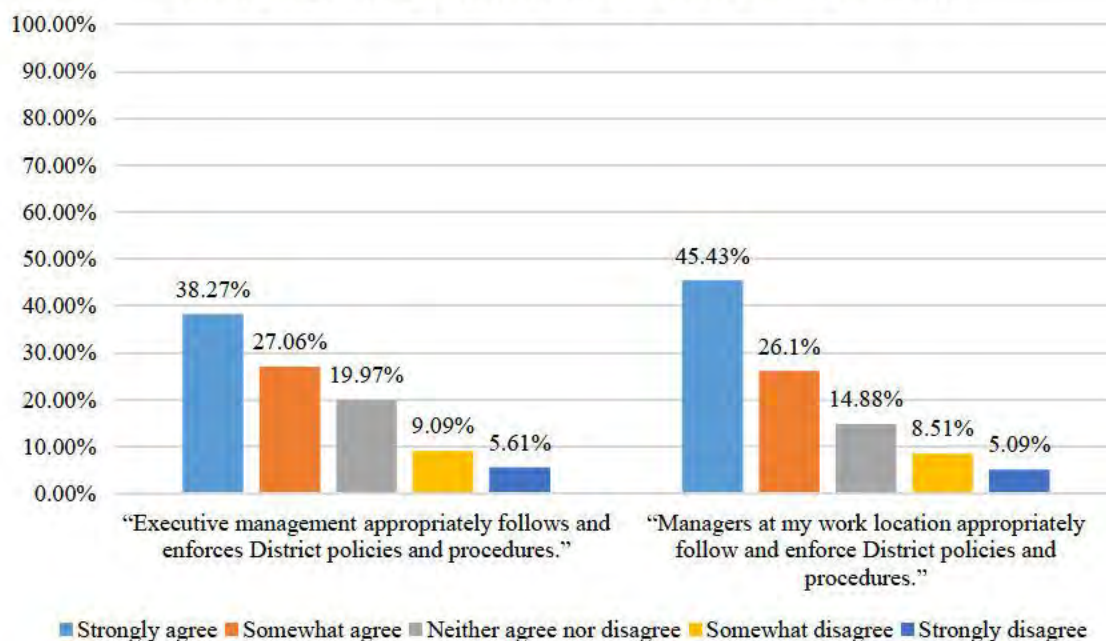
Given the challenges the District faces, a one-time training is not sufficient. The District should reinforce the messages about managing biases and bystander intervention through other means so these concepts become cultural norms. In addition, the District should provide employees at all levels with the tools necessary to proactively address the discussion of challenging social and political issues (e.g., COVID-19 vaccinations, police brutality) in a positive manner.

**b. Effectively Manage Employee Performance**

**Require managers to follow and enforce District policies and procedures.**

We asked Survey participants whether managers appropriately follow and enforce District policies and procedures. The chart below illustrates their responses, differentiated by Executive Management and managers at the participants’ work locations. The responses reveal that participants have less confidence that Executive Management follows policies and procedures than managers at their work locations.

**Beliefs Regarding Enforcement of Policies and Procedures**

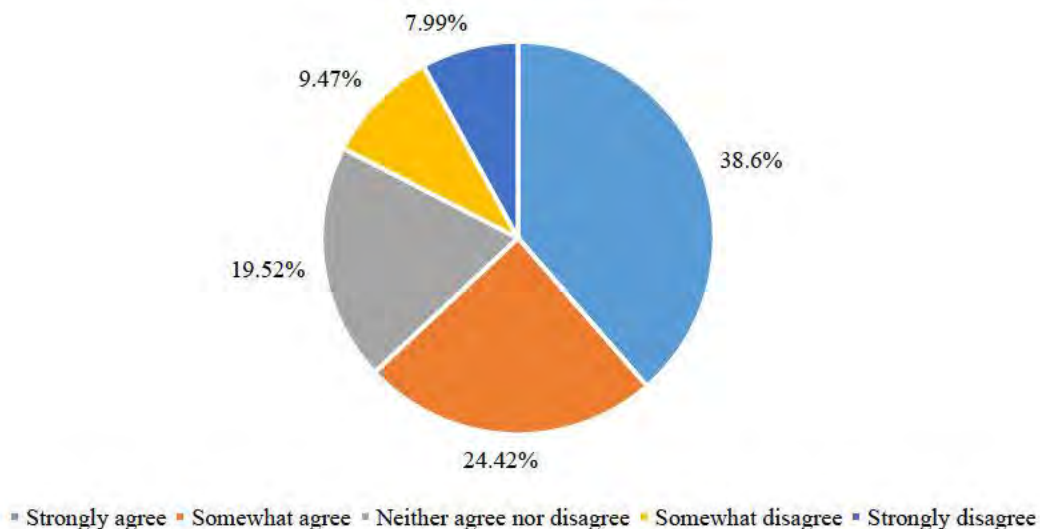


The District must be willing to hold managers accountable for following policies and procedures. This commitment is particularly important for Executive Management, who set the tone for the rest of the organization, and in field locations, where staffing issues and other resource shortages make it tempting to take shortcuts.

**Require managers to promptly and consistently address EEO Issues and other employee concerns.**

In response to whether “management at my work location takes appropriate action to address employees’ concerns,” 63% of Survey participants answered favorably (either “strongly agree” or “somewhat agree”). However, 37% did not answer favorably (“neither agree nor disagree,” “somewhat disagree,” or “strongly disagree”). Notably, when we asked Survey participants whether managers hold employees accountable, and the District holds managers accountable, employees at desert facilities were more likely than average to indicate that their answer would depend on the manager.

**“Managers at my work location take appropriate action to address employees’ concerns.”**



District managers must embrace their responsibility for preventing, responding to, and supporting employees who perceive themselves as victims of discrimination, harassment, retaliation, and bullying. The District should hold managers accountable for the climate at their work locations, and their adherence to the District’s EEO policies.

In addition, when an employee raises an EEO Issue, managers must take proactive steps to address the situation and prevent bullying and other forms of retaliation against that individual.

Contrary to the Survey results, our review of EEO case files revealed numerous instances of managers immediately reporting EEO concerns; in one case file, Alicia King noted when a manager was held accountable for failing to do so.

Of course, some EEO Issues (e.g., an employee with no history of EEO misconduct making one off-color comment), may not warrant corrective action, but rather coaching. When appropriate, coaching results in growth for the employee and builds trust with managers. Coaching still requires

follow up, though, either in direct communication to the employee or documentation in the manager's file (not in the employee's official personnel file).

To determine whether an EEO Issue requires coaching or more serious corrective action, managers should consult with their HR Strategic Partner.

**Evaluate the performance of managers and compensate them based on their ability to drive positive interactions on their team, hold employees accountable, demonstrate an appropriate “tone at the top,” and further the District’s DE&I initiatives.**

The chart below illustrates that a majority of interviewees, including managers, do not perceive that managers hold employees accountable for inappropriate workplace conduct. Ninety-four percent of interviewees who stated that they have experienced retaliation for raising a workplace concern agreed with this perception, and 29% of female employees at desert facilities stated that whether employees are held accountable for misconduct depends on the applicable manager.

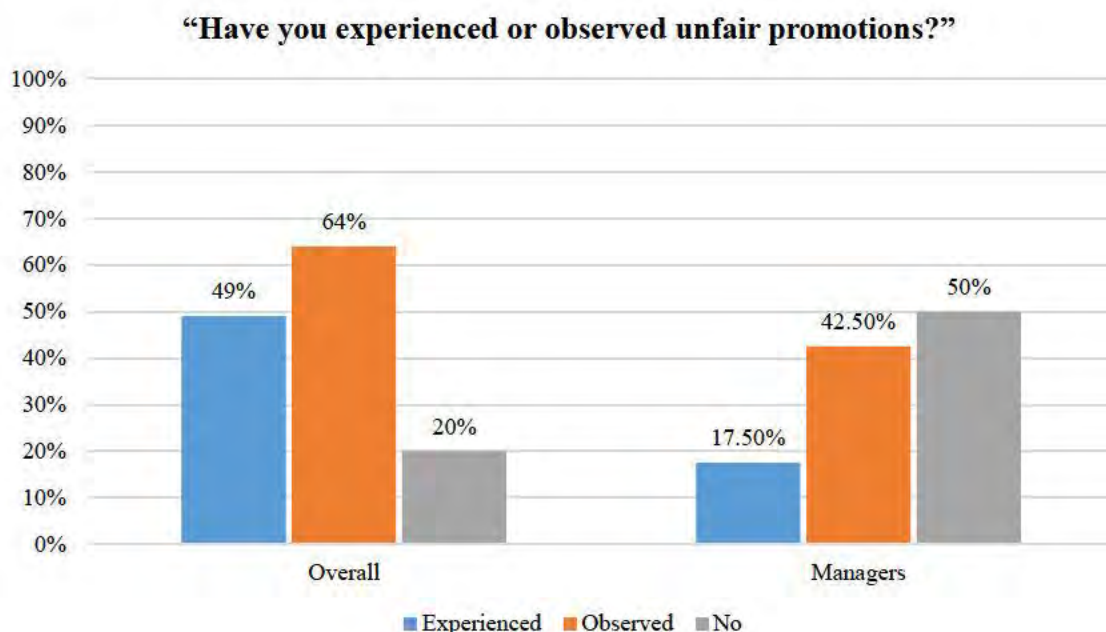


Accountability is about continuous improvement. The District's progressive discipline process is intended to be a tool for managers to address inappropriate workplace conduct in a manner that will hopefully result in improvement. However, many managers do not feel supported by HR in their efforts to address inappropriate workplace conduct using progressive discipline. They perceive the District frequently “backs down” to an aggressive union. The District should ensure each manager has the tools and support necessary to hold employees accountable when appropriate.

Further, managers need to understand that EEO compliance is a key component of their workplace responsibilities. They should face financial and other consequences if they fail to act consistent with this responsibility, provided the District makes its expectations clear.

**Require managers to provide written, position-specific training and advancement plans to all employees to prepare them for internal promotional opportunities.**

The Review data reveals that many employees perceive favoritism in promotional decisions. We discussed with 116 interviewees whether they had experienced or observed unfair promotions. A majority of interviewees (64%) reported that they had observed unfair promotions, and 49% of interviewees reported that they had experienced unfair promotions. Managers generally had a more favorable view of hiring practices, and those who responded unfavorably frequently spoke to past practices.

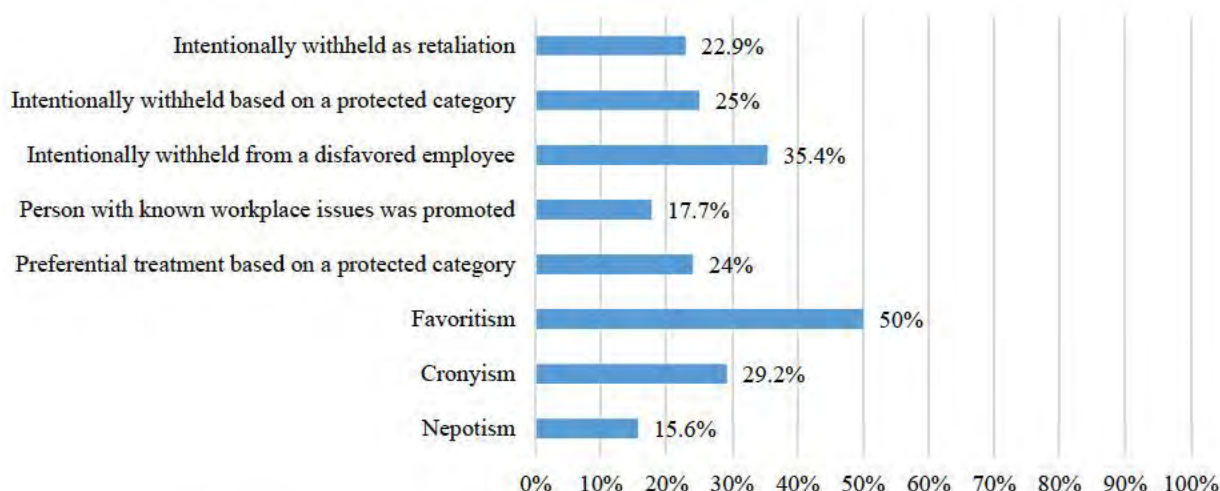


Interviewees repeatedly brought up two examples of “unfair promotions.” The first involved a manager who participated on the interview panel for a position in 2014 while romantically involved with one of the candidates. HR Unit Manager Brandon Patrick, who manages the District’s recruiting team, acknowledged the incident, and explained that HR took steps to avoid the situation in the future. For example, now, before interviews begin, all members of the interview panel complete and sign a document attesting that they reviewed the candidate list and have no conflicts of interest. Patrick provided documentation to support his explanation. Additionally, we reviewed documentation that shows the District investigated the incident and took corrective action.

The second example multiple interviewees mentioned is the perception that one manager gives preferential treatment in promotions to employees with whom he has a common national origin and/or religion. The District retained an external investigator to investigate these allegations, and we reviewed the EEO case file. The investigation report details evidence obtained through witness interviews and documents, and describes situations in which the complainants reached conclusions based on incomplete and/or inaccurate information. The investigator did not substantiate the allegations. We are satisfied that the investigator conducted a thorough investigation, and reached reasonable findings based on interviews and documents. Additionally, the Department of Fair Employment and Housing (“DFEH”) investigated these allegations in response to an employee’s complaint, and dismissed the complaint for insufficient evidence.

In addition to the two examples above, interviewees provided a variety of reasons for their belief that the promotions at issue were unfair. The most common response was a description of “favoritism.”<sup>53</sup> More than one-third of interviewees also described situations in which a hiring manager selected a less-qualified candidate over a disfavored employee. Approximately 29% of interviewees described situations involving cronyism. Employees who work at desert facilities were more than twice as likely (33.3%) than other interviewees (15.6%) to perceive that promotions were based on nepotism. Female interviewees were less likely than other interviewees to have perceived favoritism, but more likely to have perceived that a promotion was intentionally withheld because of a protected characteristic, such as sex or gender.

#### “Why was the promotion unfair?”



In 2019, Patrick analyzed 2018 recruiting data after AFSCME representatives expressed concern that hiring managers frequently did not offer open positions to the candidate with the

<sup>53</sup> Interviewees tended to use the words “favoritism,” “nepotism,” and “cronyism” interchangeably. In analyzing interview data, we defined “favoritism” as giving unfair preferential treatment to an employee, “cronyism” as giving preferential treatment to a friend, and “nepotism” as giving preferential treatment to a relative.

highest average interview score. Patrick’s analysis showed that hiring managers offered positions to the highest-scoring candidate in 223 of the 246 (90.6%) recruitments analyzed.

Further, the EEO case data does not support the employees’ perceptions of favoritism or unfair employment practices. We reviewed 11 EEO case files with recruitment-related allegations. In each case, the allegations were unsubstantiated.<sup>54</sup>

#### **The 11 EEO Cases Involving Recruitment-Related Allegations**



Based on the Review data, it appears that some employees are conflating “most experienced” with “most qualified” for a position. However, the District’s recruiting process evaluates a candidate’s education, experience, and licenses to determine whether they meet the minimum qualifications for the position and should be interviewed. An employee with more experience should be able to draw on that experience to perform well in the interview, but the experience alone does not entitle them to the position.

Some employees do not understand that they are responsible for managing their own careers. They need to be their own advocate—communicate with their managers about their career goals, take advantage of learning opportunities and opportunities to increase skills, prepare for interviews, and ask the panel members for feedback after the interview.

Similarly, some managers do not understand that they have a responsibility to help their employees reach their career goals. Managers need to take initiative to understand their employees’ goals and support them by providing learning opportunities and regular, honest feedback on their work performance.

Managers we interviewed provided inconsistent information about their approach to performance evaluations. The District should ensure that managers understand the District’s

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<sup>54</sup> Three EEO cases with recruitment-related allegations are pending results.

expected approach to performance evaluations and provide adequate tools to support managers in providing effective and frequent feedback to employees.

Preparing employees for promotional opportunities requires joint effort on the part of the employee, the manager, and the District. Professional development should be an ongoing aspect of every employee's relationship with their manager. Managers should consider rotational assignments when appropriate, and prepare written training and development plans for each employee to prepare for growth opportunities.

**Continue management forums and leadership breakfasts, with a focus on providing opportunities for managers to learn from one other.**

We understand the District coordinated management forums and leadership breakfasts before the COVID-19 pandemic. Once it is safe to do so, we encourage the District to continue these events. They provide an important opportunity for managers to learn from one another's successes and failures and gain helpful tips. It is much more efficient for a manager to learn from a colleague who already has solved the problem the manager is experiencing, than spend time trying to solve the problem independently.

Additionally, some managers reported that management can be lonely. This sentiment is particularly true for managers in desert facilities, who recognize that it is inappropriate to socialize regularly with their subordinates (especially when alcohol is involved). These manager-oriented events can help alleviate some of the feelings of isolation.

Also, building relationships with other managers will make facilitating rotational assignments easier.

**c. Dedicate Sufficient Resources to EEO Compliance**

**Create additional positions in the Training Unit and Employee Relations to ensure both areas are properly staffed and resourced.**

The District's Training Unit appears committed to providing cutting-edge training for professional development to help managers (and potential managers) develop the skills to be successful. Further, the Training Unit includes staff who are skilled coaches, which makes them valuable partners for Employee Relations and the HR Strategic Partners. We understand demand for this skill is growing as the stigma around coaching is diminishing, and managers are increasingly seeing coaching as a benefit. However, the Training Unit is under-resourced, considering the District's size and geographical reach.

Similarly, the HR Strategic Partners are too frequently pulled away from their strategic work by Employee Relations issues. Each HR Strategic Partner works with an Employee Relations Specialist, but there is more work than they can handle. The District should create additional positions in Employee Relations to support the HR Strategic Partners.

Currently, there is only one Strategic Partner and one Employee Relations Specialist to support the entire WSO group. The District should assign one Employee Relations Specialist to employees in the desert facilities. Ideally, the Employee Relations Specialist would be located at Gene, and expected to visit the other desert facilities on a regular basis.

The Training Unit, the HR Strategic Partners, and Employee Relations will be instrumental to the success of the District's EEO Office and improvements to the District's working environment. Together, they can encourage employees and managers to accept personal responsibility for their actions, keep an open mind about contrary perspectives, and move forward despite past EEO Issues.

**Provide in-depth and regular training to relevant HR personnel regarding laws, regulations, and best practices regarding responding to accommodation requests and handling confidential medical documentation.**

The Review data regarding the basis of EEO complaints revealed that the District receives more disability complaints than we normally see in our practice. The District should ensure that employees responsible for responding to and processing requests for medical leave and disability accommodations are properly trained on new laws, regulations, and best practices.<sup>55</sup>

## **2. Investigation and Resolution of EEO Issues**

EEO Case Files. We requested all of the District's EEO case files from 2015 to present. We received and reviewed 75 case files.<sup>56</sup> We also included quantitative data from the four task order investigations in our EEO case analysis.

The chart below illustrates the categories of allegations in the 79 cases.<sup>57</sup> Thirty-three percent of the cases included a retaliation claim—the most of any category. Eighteen percent of these cases included claims of alleged improprieties in recruitment. There were considerably more race-based complaints than complaints of sexual harassment or gender discrimination (although combining the sexual harassment and gender discrimination complaints into one category yields a total that exceeds any other category).

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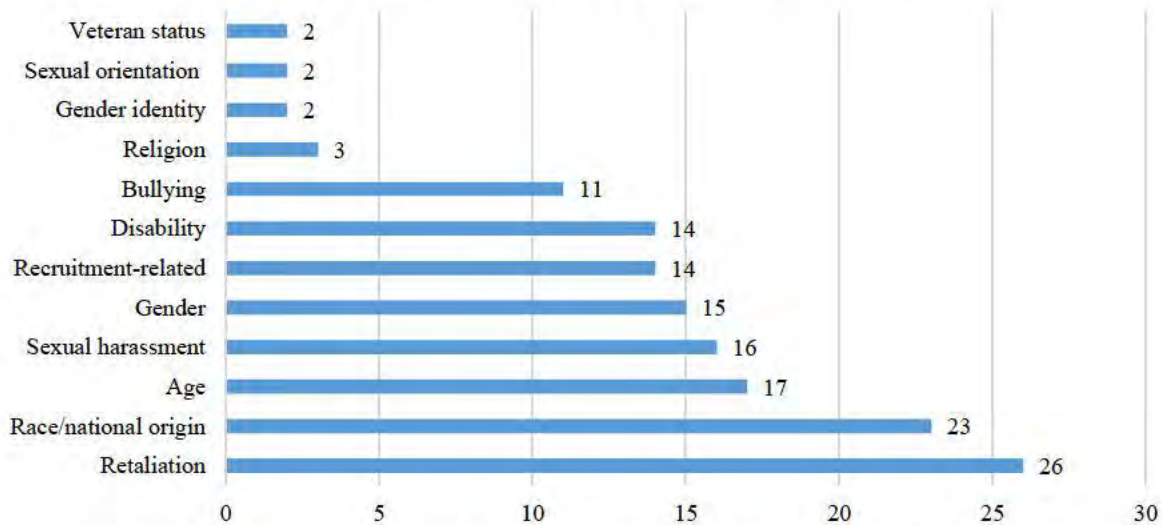
<sup>55</sup> It came to our attention during the Review that the District retains the services of a physician to review reasonable accommodation requests and other medical documentation. The District should obtain legal guidance regarding whether this practice is compliant with state and federal law.

<sup>56</sup> We also reviewed the EEO case files regarding Chavez's 2012 and 2013 complaints, and Grow's 2010 complaint. As stated above, information from these cases informed our observations and recommendations included in this Report

<sup>57</sup> Many of the cases contain allegations in multiple categories. For example, if an employee claimed a hiring manager did not select them for a position because of their age, we included the case in the "age" and "recruitment-related" categories.

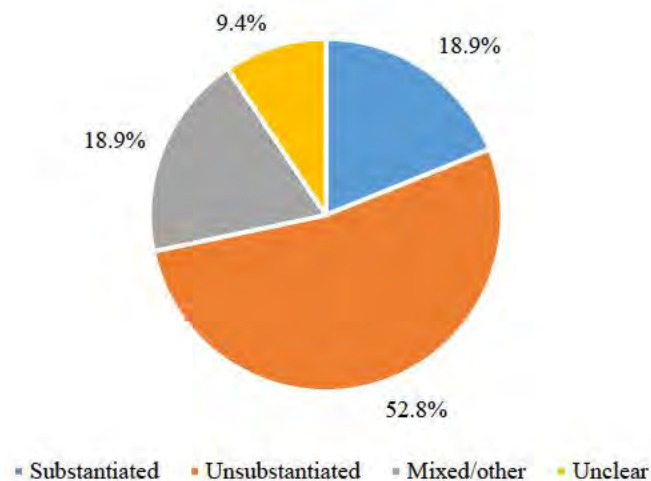
Although "bullying" is not an EEO Issue, we included it as an allegation category if a bullying allegation was investigated along with EEO-related allegations.

### Categories of Allegations on EEO Cases (2015–Present)



Twenty-six of the 79 cases we reviewed are still pending.<sup>58</sup> The chart below illustrates the results in the other 53 cases.<sup>59</sup> The perception among some employees that the District does not substantiate EEO Issues is inconsistent with the Review data. Anecdotally, the percentage of substantiated cases is not out of line with what we generally observe in our practice.

### EEO Investigation Results (2015–Present)



<sup>58</sup> The pending cases include the four task order investigations discussed above in **Section II.I.2**.

<sup>59</sup> “Mixed results” means that some of the allegations were substantiated, and some were unsubstantiated. This result includes some cases in which the allegations were unsubstantiated, but the investigation revealed other issues that were referred for remedial action.

“Unclear outcome” means the file did not contain sufficient information to determine whether an investigation was conducted, and if so, the outcome.

We analyzed the data from several perspectives. The table below illustrates the results by allegation category, and reveals that investigators substantiated a greater percentage of racial and sexual harassment complaints than other allegation categories.<sup>60</sup>

<b>Allegation Category</b>	<b>Substantiated</b>	<b>Unsubstantiated</b>	<b>Unclear Outcome</b>	<b>Pending</b>	<b>Total</b>
Retaliation	4	12	3	7	26
Race/National Origin	6	11	1	5	23
Age	1	11	0	5	17
Sexual Harassment <sup>61</sup>	5	8	0	3	16
Gender	1	7	0	7	15
Recruitment-related	0	11	0	3	14
Disability	3	3	3	5	14
Bullying	6	3	0	2	11
Religion	2	1	0	0	3
Gender Identity	0	2	0	0	2
Sexual Orientation	0	1	0	1	2
Veteran Status	1	0	0	1	2
<b>TOTAL</b>	<b>29</b>	<b>70</b>	<b>7</b>	<b>39</b>	<b>145</b>

The table below illustrates that more complainants are male than female. The table also illustrates that AFSCME's assertion to us that the District "almost summarily dismisses" EEO complaints submitted by male employees is inconsistent with the Review data.

<b>Complainant(s)</b>	<b>Substantiated</b>	<b>Unsubstantiated</b>	<b>Mixed Results</b>	<b>Unclear Outcome</b>	<b>Total</b>
Male	6	14	3	4	27
Female	4	11	6	1	22

<sup>60</sup> The number of unsubstantiated sexual harassment complaints is somewhat misleading. In several cases, the conduct alleged was substantiated, but the investigator found that the conduct did not violate District policy (and in some cases, the investigator made legal findings that the complainant did not suffer from a "hostile work environment").

<sup>61</sup> Four of the five complainants in the substantiated sexual harassment cases are female. Only one (the male complainant) worked at a desert facility. Of the other four, two worked at Union Station, and two worked at a water treatment plant.

Seven of the eight complainants in the unsubstantiated sexual harassment cases are female. Three (all females) worked at desert facilities. Of the other five, one worked at Union Station, and four worked at other field locations.

All three of the complainants in the pending sexual harassment cases are female. Two worked at desert facilities, and one worked in another field location.

Complainant(s)	Substantiated	Unsubstantiated	Mixed Results	Unclear Outcome	Total
Anonymous or multiple complainant(s)	0	3	1	0	4
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>5</b>	<b>53</b>

Significantly more complaints are submitted against managers than rank-and-file employees. Investigators substantiated a majority of cases against rank-and-file employees. By contrast, a majority of cases against managers were unsubstantiated.

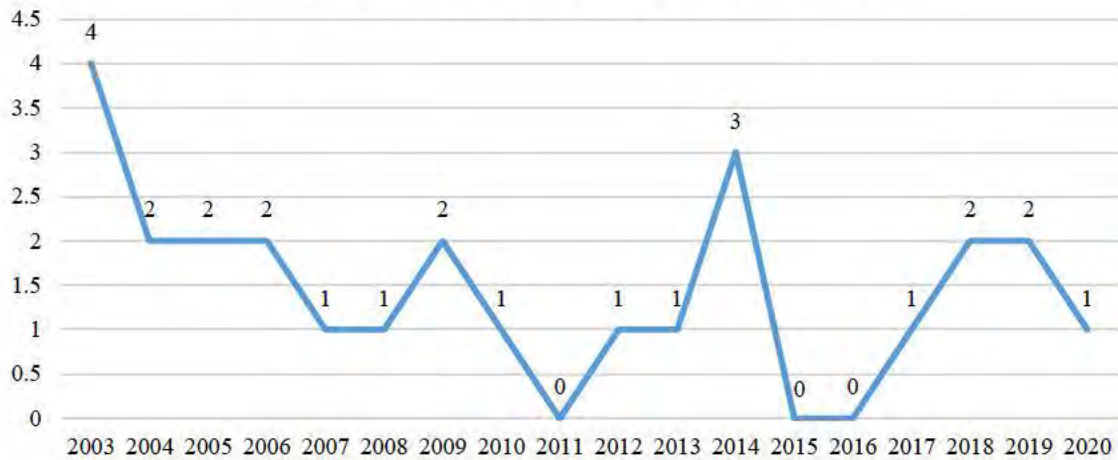
Respondent(s)	Substantiated	Unsubstantiated	Mixed results	Unclear Outcome	Total
Rank-and-file employee(s)	7	2	2	0	11
Manager(s)	3	25	7	5	40
Both	0	1	1	0	2
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>5</b>	<b>53</b>

The table below compares results from cases Alicia King investigated and cases external investigators investigated. The table does not include the five “unclear outcome” cases because in some cases, it was unclear who, if anyone, investigated the complaint.

Investigator	Substantiated	Unsubstantiated	Mixed results	Total
Internal (A. King)	8	15	4	27
External	2	13	6	21
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>48</b>

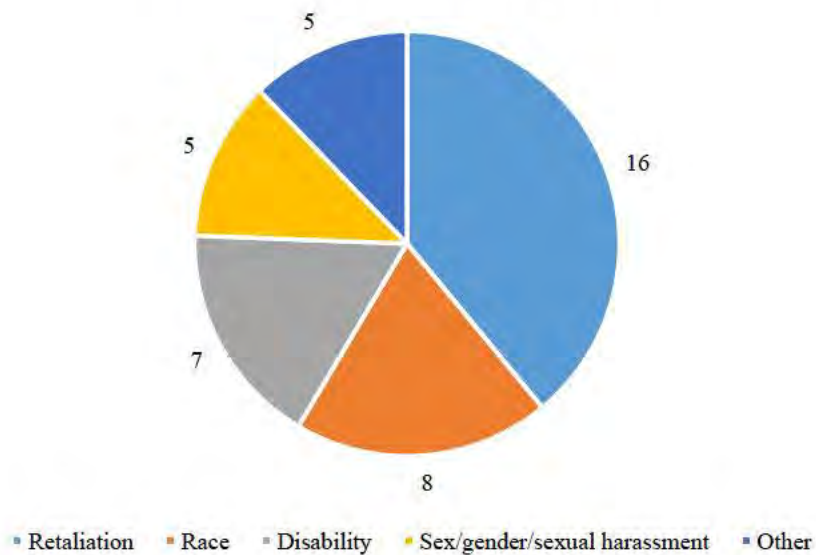
Employment-Related Lawsuits. We reviewed data the District provided regarding employment-related lawsuits. From 2003 to present, employees or former employees filed 26 lawsuits against the District. The chart below illustrates the number of lawsuits filed each year, ranging from zero (2011, 2015, 2016) to a maximum of four (2003).

### Employment-Related Lawsuits Filed (2003–Present)



In these lawsuits, 15 of the plaintiffs (58%) were male, and 11 (42%) were female. The chart below summarizes the claims at issue in the lawsuits, 61.5% of which included a retaliation claim.<sup>62</sup>

### Basis of Lawsuits (2003–Present)



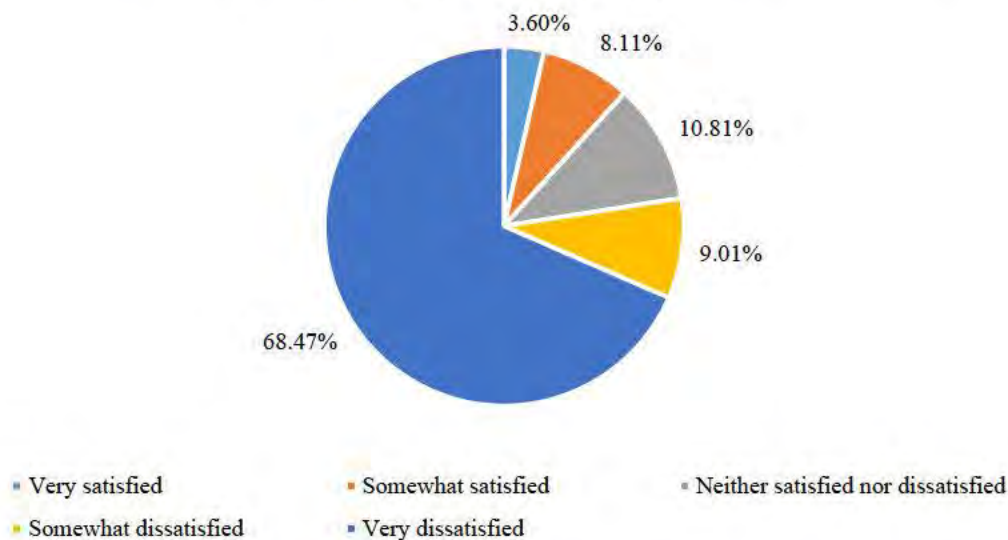
The court dismissed seven of the lawsuits (27%), and the District settled the remaining 19 (73%).

<sup>62</sup> Some of the lawsuits included more than one claim.

As discussed above, 223 (14%) Survey participants indicated they have experienced EEO Issues in last three years.<sup>63</sup> Of those participants, approximately 49% reported their experience to a District employee; slightly more than 50% did not.

The chart below illustrates that 77% of the 112 participants who reported EEO Issues internally were dissatisfied with the District's treatment of their concerns. Notably, female employees at the District's desert facilities were dissatisfied unanimously with the District's treatment of their concerns.

**"How satisfied or dissatisfied are you with the way the District responded to your report?"**



Survey participants most frequently reported the following reasons for their dissatisfaction with the District's treatment of their concerns: (1) they did not feel "heard" (i.e., they perceived that the District did not take their concerns seriously); (2) they perceived that the District did not take action to address their concerns; and (3) they experienced retaliation after raising their concerns. To the contrary, participants who were satisfied with the District's treatment of their concerns felt that they were "heard" and supported, that the District solved the problem at hand, and that the District prevented any further misconduct.

We recommend that the District take the steps outlined below to improve its effectiveness in responding to potential EEO Issues.

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<sup>63</sup> In the Survey, we did not ask employees if they have experienced "discrimination," "harassment," or "retaliation," because these terms have specific legal meaning. Rather, we asked employees, "In the last 3 years, have you had any experiences at [the District] during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?"

**a. The Structure of the EEO Office**

**Elevate the EEO Office to an independent department, and eliminate Legal's direct involvement in most investigations.**

Elevating the EEO Office to an independent department will demonstrate the District's commitment to EEO compliance, and engender confidence in the integrity of the Office's activities to encourage employees to report potential EEO Issues. Although some Survey participants and interviewees suggested moving the EEO Office to the Ethics Office, those programs serve different functions, and combining them likely would create confusion among employees.

The new EEO Office should be managed by an EEO Officer who reports directly to the Board, just like the Ethics Officer.<sup>64</sup> The successful candidate must be experienced in managing all aspects of EEO programs, and be able to directly supervise internal and external investigators.

It is critical that the EEO Officer is viewed as neutral in resolving EEO Issues. The EEO Officer should not be eligible for bargaining unit representation, so the potential conflicts of interest with the current EEO Manager also acting as the President of ACE will be eliminated. In the meantime, the current EEO Manager should recuse herself as the EEO Officer from any case involving an ACE member to avoid even the appearance of a conflict of interest.

Currently, Legal selects and manages external investigators for EEO investigations. However, the EEO Officer should have authority to select and manage external investigators when it is not appropriate or feasible to conduct an internal investigation, just as the Ethics Officer does for Ethics investigations. Legal should be consulted only for advice as needed. In a small number of the EEO cases we reviewed, Legal overrode the EEO Manager's recommendation to investigate a complaint, which should not be a decision within Legal's purview. Additionally, Legal is not sufficiently selective regarding the qualifications of external investigators. Although many of the external investigators the District retains are competent, Legal repeatedly retains some investigators who do not follow best practices.

The EEO Officer also should define the scope (i.e., the issues under review) of investigations. This practice is particularly important for external investigators to reduce cost and eliminate duplication of effort (e.g., if internal investigators will handle a portion of the investigation, and the external investigator is not aware of that fact).

**Create additional internal EEO investigator positions.**

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<sup>64</sup> We recognize this recommendation is a departure from the structure in a majority of the organizations the District uses as comparators for compensation and other decisions (e.g., East Bay Municipal Utility District, Los Angeles County Metropolitan Transportation Authority, Los Angeles Department of Water and Power, Orange County Water District, and San Diego County Water Authority). However, we see many parallels between the District's EEO function and Ethics function. Additionally, in our experience, the EEO Office (or Office of Civil Rights) in many state agencies is an independent office that reports directly to the agency head.

Considering the District's size and geographical scope, the EEO Office should have at least three internal investigators to review potential EEO Issues. These investigators should be a team within the EEO Office, reporting to the EEO Officer. As discussed more fully below, the District should hire internal investigators who are properly trained in workplace investigation best practices and trauma-informed practices.

**b. The District's Current Investigation Practices**

**Regularly communicate with all employees regarding the separate components of the EEO Office and the Ethics Office, including direct messaging from the General Manager, the CAO, and the Ethics Officer.**

Some employees do not understand the difference between the Ethics and EEO Offices, and everyone will benefit from more transparency regarding their respective functions. The presentation by Pitman and Salinas to the OP&T Committee regarding "Human Resources and Ethics Office Roles in Addressing Complaints," dated March 8, 2021, is an excellent resource.

**Implement a hotline program to allow for anonymous reporting of EEO Issues.**

As described in **Section VI.2.** above, the Review data revealed that the most frequently reported reasons for employees to feel dissatisfied with the District's treatment of their concerns is they perceived that the District did not take their concerns seriously. Several interviewees described interactions with members of the EEO Office, HR, or Legal that lacked empathy, and left them feeling "dismissed" or "blamed."

For the complainant, how they were treated in the process affects them as much, if not more, than the outcome of the investigation. As a result, many employees perceive that the District, and HR and Legal in particular, is overly focused on defending managers' actions rather than addressing employees' true concerns.

Given the employees' current level of distrust, providing a method for employees to anonymously report perceived EEO Issues would encourage employee participation in the EEO compliance process.

**Update the District's "EEO Discrimination Complaint Procedures," and provide copies to complainant(s) and respondent(s) in each investigation.**

The District's current EEO procedures should be updated to reflect the District's actual practices. In addition, the EEO Officer should provide the parties to an investigation a copy of the practices at the beginning of every investigation to ensure they understand how the investigation process will work.

Although the procedures state that the District will maintain investigation files that contain any corrective action taken as a result of the investigation, the EEO case files we reviewed do not

contain such documentation. Instead, Employee Relations maintains those records. Although Employee Relations drives the corrective action process, the EEO case files also should reflect the District's post-investigation actions.

The procedures also should include language explaining that the corrective action taken after an investigation is intended to address the substantiated behavior and prevent future occurrences. Many employees perceive that termination is the only appropriate remedy for a violation of the District's EEO policies, which is not the case.

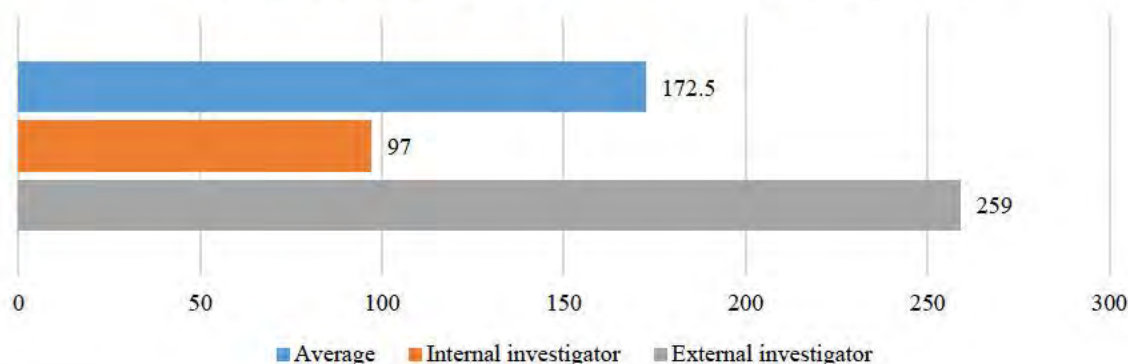
**Create a process for investigating and resolving complaints against department heads and Directors.**

The Ethics Office recently proposed a process to apply when potential EEO Issues involve department heads and Directors (which will need to be revised to include the EEO Officer position if the Board accepts our recommendation to upgrade the EEO Manager position to an EEO Officer title). Based on our review of the proposed process, the District should adopt proposed "Administrative Code § 2416. Duties and Functions. [Executive Committee]."

**Initiate and complete investigations of EEO Issues in a timely manner.**

Our review of EEO case files revealed that the average length of time from the date an employee reported a complaint to the date the investigator submitted the investigation report was 172.5 days.<sup>65</sup> This is far too long for the average case to be open. We observed that when Alicia King was investigating EEO complaints, she generally conducted thorough investigations in a relatively timely manner. After Pitman reassigned the EEO investigation function back to the EEO Office in 2019, the time to resolve internal complaints increased significantly.<sup>66</sup>

**Days from EEO Complaint to Final Report (2015–Present)**



<sup>65</sup> In the "Days from EEO Complaint to Final Report (2015–Present)" chart, "Internal Investigator" means Alicia King conducted and managed the investigation process. "External Investigator" means the District retained an external investigator to conduct the investigation, and Legal managed the investigation process.

<sup>66</sup> As previously discussed, the current EEO Manager does not manage EEO investigations; she refers them to Legal to manage.

The District is required to initiate and complete investigations in a timely manner. Generally, the investigation process should take no longer than 60 days for internal or external investigations, absent unusual circumstances. This data supports our recommendation above that the District should hire additional EEO investigators.

In addition, the EEO Office should not delay the initiation of an investigation pending receipt of a written complaint, which we observed in a small number of cases. Once the District is on notice of a potential EEO Issue, the District should begin the investigation process.

Of course, the District need not conduct a formal investigation for every EEO complaint. Some complaints can be resolved by having a conversation with each of the parties. Additionally, the purpose of an investigation is to determine what happened when the organization does not already have that information. If the District already knows what happened, the EEO Office can refer the matter to Employee Relations for further action. Regardless of whether the EEO Office handles complaints in an informal manner or by conducting a formal investigation, every relevant document, conversation, and decision should be documented in the EEO case file.

**Immediately identify during investigations of EEO Issues whether interim measures are appropriate.**

In certain situations, it may be appropriate for one of the parties involved to be reassigned temporarily or placed on PAL. PAL should be used rarely, and only in circumstances when an employee should not remain in the workplace. It is appropriate to place an employee on PAL, for example, when the employee has threatened physical violence or as needed to protect sensitive information.

PAL temporarily relieves an employee of their normal job duties; it is not the same as teleworking. When an employee is on PAL, it is a best practice to collect all District property (e.g., keys, computer devices), and disable the employee's access to the District computer network and email system while on PAL.

**Prioritize investigations if any employee is placed on PAL pending completion of the investigation.**

The Review data reveals multiple examples of employees remaining on PAL for several months. If the District places an employee on PAL, the investigation should be prioritized, and completed as quickly as possible. This practice will reduce costs, and the District's potential liability if an employee remains on PAL for a substantial period of time, is eventually exonerated, and then later claims that the leave negatively affected their employment opportunities.

**Take appropriate steps to prevent any form of retaliation against individuals involved in the complaint process.**

We address this issue more fully in **Section VI.C.** below.

**Provide in-depth and regular training to all EEO Office personnel regarding complaint intake and investigation best practices, and ensure internal EEO investigators are trained in trauma-informed practices, including interview techniques and credibility assessments.**

Because of the complexities of the District's workplace, all EEO Office personnel must be properly trained and competent in all aspects of the investigation process. The knowledge and understanding of trauma-informed interview practices can be helpful in any investigation, but they are particularly important for investigations involving complaints of violence, sexual misconduct, or prolonged bullying. The presence of trauma changes the way a person encodes and stores memory. Using trauma-informed interview techniques will aid the investigator in obtaining more reliable information, and more importantly, avoid causing secondary trauma.

**Make only factual findings during investigations, not policy and/or legal findings, and use the appropriate evidentiary standard.**

The District's current practice of permitting external investigators to make policy and/or legal findings is inconsistent with best practices. Investigators should focus only on factual issues, and leave policy findings to HR and corrective action to Employee Relations.

In addition, the current use of the terms "unfounded" and "insufficient evidence" in investigation reports is inconsistent with best practices. All investigators should use a binary standard (e.g., "sustained"/"not sustained," or "substantiated"/"unsubstantiated").

**c. Post-Investigation Practices**

**Adopt restorative practices, including creating a conflict resolution team, requiring transparency about the District's remedial actions to the extent consistent with employee rights, and ensuring appropriate follow-up after an investigation is complete.**

Employees who had submitted EEO complaints frequently complained that they did not receive a copy of the investigation report. Further, corrective action taken, if any, is generally intended to address the policy violation, and does not consider the harm to the employee or to the working environment. The District's current lack of restorative processes leaves many employees involved in the complaint process feeling unheard, disrespected, and unsure of how to work together. The District should consider creating a conflict resolution team to address this issue.

Although transparency is an important part of restorative practices, we do not recommend providing copies of reports to the parties outside of any legal obligation to do so (e.g., when the District relies on a report for disciplinary action, the respondent is likely entitled to a copy of the report before their Skelly hearing). Curiosity about consequences is understandable, but full transparency could constitute a violation of an employee's privacy.

Ultimately, employees know a problem is solved because the conduct has stopped. Complainants seeking more information are setting themselves up for disappointment, which eventually becomes resentment. The more resources the District dedicates to restorative processes, the more likely employees will accept the results of investigations, even if they disagree with those results.

The District is fortunate to have some employees who are particularly skilled in this area and could be influential if, as recommended above, the District dedicates sufficient resources to the Training Unit and Employee Relations.

**Implement a process for Employee Relations and/or the EEO Office to inform internal recruiters about information relevant to transfer requests, such as an employee's prior complaint against an employee working at the potential new location.**

The District maintains a Transfer List of employees who desire to transfer to a different location or position within their classification. Employees may complete a Transfer Request form, which adds them to the list for one year. When a position becomes available, the Recruiter managing the recruitment consults the transfer list for any eligible employees. The hiring manager must consider these employees for the position before accepting other internal and/or external applications. If the Recruiter selects an employee on the Transfer List for the position, the Recruiter asks Employee Relations if the employee is "eligible" to transfer. Employees are eligible to transfer if their manager rated them as "Meets Expectations" or higher on their most recent performance evaluation, and the employee has no appealable disciplinary action. Employee Relations provides only a "yes" or "no" answer to the Recruiter's eligibility inquiry. Employee Relations does not provide any additional details.

Managers generally do not know when employees from other locations have a history of disciplinary action or conflict with other employees, nor should they. The District should implement a process that allows Employee Relations and/or the EEO Office to inform Recruiters who inquire about an employee's eligibility for transfer that the employee has history with their office that should be considered. Such history does not necessarily make the employee ineligible for the transfer. However, the District has a responsibility to ensure that an employee with a history of conflict or EEO Issues with another employee does not transfer to that employee's location when the transfer would be traumatizing or disruptive.

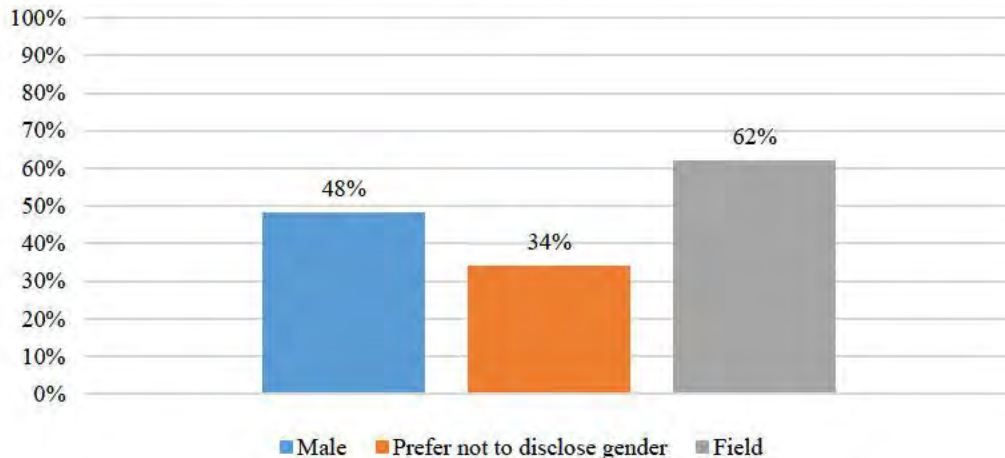
**Consider eliminating confidentiality/non-disclosure provisions in settlement agreements with employees who will remain employed with the District after the investigation is completed.**

Although generally lawful, the District's practice of including non-disclosure and/or confidentiality provisions in settlement agreements with current employees encourages mistrust and speculation.

## B. Recommendations Regarding the DE&I Council

As shown in **Section III.C.** above, we asked Survey participants, “Which of the following best describes your race/ethnicity?” Approximately 10% of Survey participants selected “prefer not to disclose.” Of the 155 participants who preferred not to disclose their race, 62% work in field locations, 48% identified their gender as male, and 34% preferred not to disclose their gender.

**Survey Respondents Who Selected “Prefer Not to Disclose Race”**



This data explains why the DE&I Council’s work is so important. As discussed in **Section V.** above, the District still has work to do to improve the working environment for racial and ethnic minorities. However, with 10% of District employees avoiding the conversation about race altogether, the District will find it challenging to accomplish that work.

We recommend that the District take the steps outlined below regarding the DE&I Council.

**Create a DE&I Manager position to be filled by an individual with prior DE&I experience to create a DE&I Office, lead the DE&I Council, and guide Council members and District Leadership to identify and implement best practices.**

DE&I issues are complex and often misunderstood. For example, we asked interviewees if the working environment is safe and respectful for racial and ethnic minorities. A common answer was something to the effect of, “It seems diverse,” an answer that conflates the concepts of diversity and inclusion.

DE&I Council members interviewed provided inconsistent explanations of the DE&I Council’s purpose, even after the Council adopted its mission statement. Further, they reported that six months into the launch of the Council, no one ever defined the terms “diversity,” “equity,” or “inclusion” relative to the work they were expected to do. Although most of the DE&I Council

members are enthusiastic about the opportunity to influence a more diverse, equitable, and inclusive workplace, they admit they lack knowledge of how to do so.

These volunteers cannot effectively solve a problem they are unable to define without guidance from an expert in DE&I issues. The District should create a DE&I Manager position to create a DE&I Office, lead the DE&I Council, and provide necessary guidance to the Council and District Leadership as they seek to identify and implement best practices for a DE&I initiative.<sup>67</sup> The District's DE&I Office should encompass the District's Affirmative Action and outreach functions.

The DE&I Manager must be viewed as independent, and have the ability to establish trust and work collaboratively with employees. Because of the nature of the Council's functions, we discourage the District from making the DE&I Manager position eligible for membership in a bargaining unit.

**Take steps to further develop the DE&I Council.**

The District launched the DE&I Council with positive intentions, but little planning. As a result, the Council's start was a bit rocky. Council members were eager to begin discussing DE&I issues and making recommendations that would lead to positive change, and quickly became frustrated with the lack of clarity on the Council's structure and purpose. The Council is working through some of the growing pains of launching a new initiative. The members are laying a foundation for the important work to be done, and they should continue to be patient and diligent in further developing the Council's structure and goals.

Once the District hires a DE&I Manager, one of their first priorities should be collaborating with the DE&I Council to define the terms "diversity," "equity," and "inclusion" for purposes of furthering the Council's work. Next, the DE&I Manager should guide the Council to identify appropriate initiatives, and set specific and measurable quarterly and annual goals for the Council to implement and evaluate the initiatives identified.

The Council recently established five subcommittees: Communications & Outreach, Recruitment, Recruitment Outreach, Training & Development, and Promotions. The Council should further refine the scope and purpose of the subcommittees, and consider adding a subcommittee focused on supporting ERGs and outreach to form ERGs for groups not currently represented (e.g., members of the LGBTQ+ community and allies, employees with disabilities, and veterans).

Some interviewees expressed concern over the lack of transparency about the Council's activities. For example, there is a "microsite" for the Council on the District's intranet ("IntraMet") where employees can find information about the Council's activities. However, the employee who provides administrative support for the Council prepares a document that summarizes the events

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<sup>67</sup> Some of the District's detractors would prefer for a Director to lead the DE&I Council because they distrust District Leadership. We do not support this desire. Our recommendations are designed to support the intent of creating an employee-led forum.

at each meeting, rather than detailed meeting notes. The Council should consider how to make their activities sufficiently transparent for all District employees to trust the process.

**Only permit Executive Management to attend DE&I Council meetings when invited by the Council.**

Currently, Executive Management attends all Council meetings. A majority of Council members reported that their presence is intimidating, and makes them reluctant to participate in Council discussions. Once the District hires a DE&I Manager, we recommend that the DE&I Manager serve as Executive Management's liaison to the Council and report progress as needed. However, the Council should invite Executive Management to attend full Council meetings periodically for the opportunity to continue dialogue about DE&I issues and show support for the Council's efforts.

**Ensure that participation on the DE&I Council is voluntary.**

When the District launched its DE&I initiative, Chapman asked each of the ERG Presidents to designate two members to serve as representatives on the DE&I Council. Although many of the DE&I Council members volunteered to represent their bargaining unit or ERG on the Council, some feel obligated to participate simply because they hold a leadership position in their ERG. It is important that Council members genuinely want to participate in the Council's efforts. If a member chooses to resign from the Council, they must be able to do so without repercussions.

**Continue to support DE&I Council participation by releasing Council members from their regular work assignments to attend Council meetings and perform Council work.**

Some of the DE&I Council members expressed concern about the time they are investing in Council work, at the expense of their regular duties. The District took steps to allocate time for Council members to attend Council meetings and perform Council work, similar to the way bargaining unit officers and representatives can designate time spent on union activities as "union release." The District should continue this practice to support the Council's efforts.

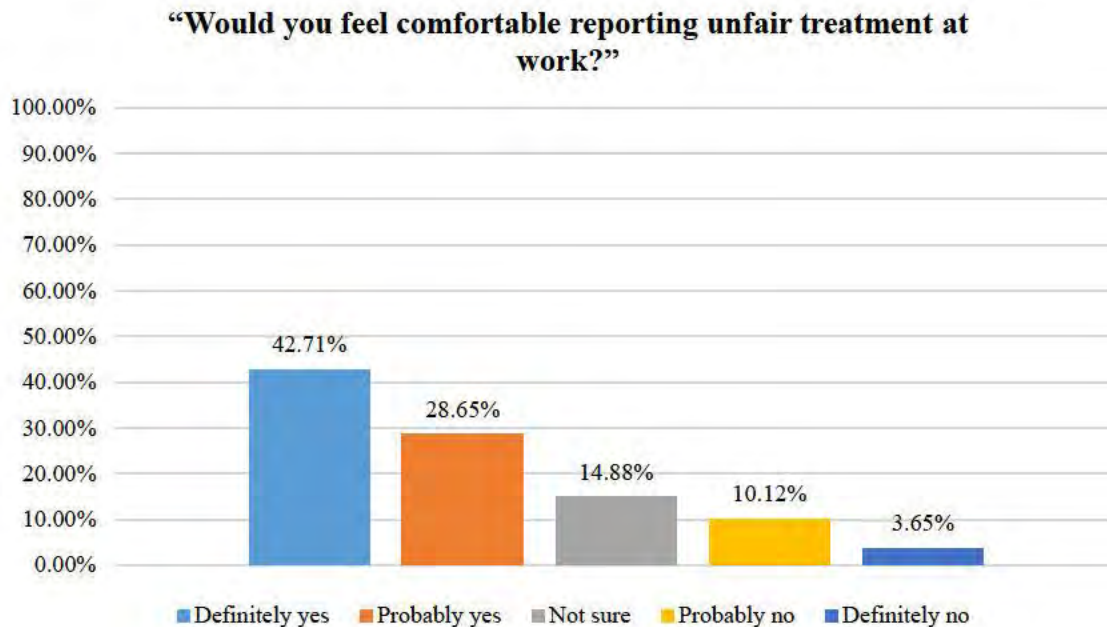
**Include the DE&I Council in the implementation of the recommendations in this Report as appropriate.**

Many of the recommendations in this Report for preventing EEO Issues are aligned with the DE&I Council's interests. The District should include the Council in the implementation of the recommendations as appropriate.

### C. Recommendations Regarding Employees' Fear of Retaliation Related to EEO Issues

Employees who fear reprisal or retaliation often are discouraged from raising EEO Issues, which is consistent with the Review data discussed below.

The chart below illustrates that 71% of Survey participants would feel comfortable reporting EEO Issues internally.<sup>68</sup>



The 29% of Survey participants who expressed discomfort with reporting EEO Issues internally most frequently noted the following reasons for their discomfort: (1) fear of retaliation and/or other damage to their career; (2) a perception that no one will care about their concerns and/or the District would not take action to address their concerns; and (3) a perception that HR and/or managers with knowledge of the complaint would not maintain appropriate confidentiality. A smaller number of participants attributed their discomfort to a previous negative reporting experience.

The Survey yielded the following additional insights regarding perceived EEO Issues:

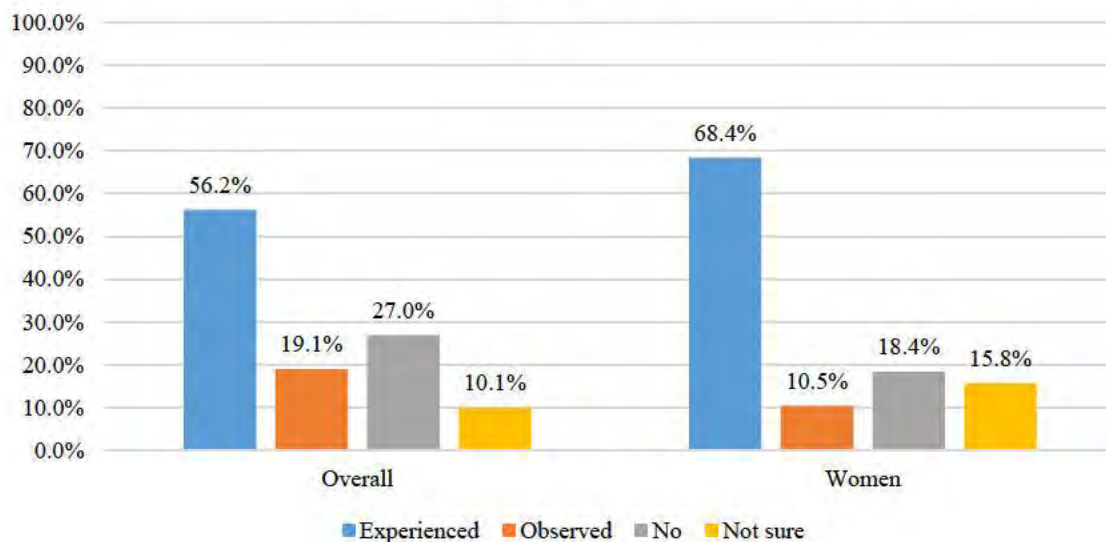
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<sup>68</sup> At first glance, this result appears to be inconsistent with the results of the Ethics Survey. It is important to note, however, that the surveys asked different questions. The Ethics Survey asked whether participants agreed with the statement, “I can disclose a suspected violation without fear of reprisal.” In our Survey and follow-up interviews, we intended to determine why employees fear reprisal or retaliation for reporting concerns, and related facts to support their fears, if any. We did not determine if employees are more or less comfortable reporting EEO Issues than suspected ethics violations.

- Managers are more comfortable with the concept of reporting their concerns than rank-and-file employees, but less likely actually to report their concerns. This result is particularly evident for managers at Union Station. To the contrary, managers at desert facilities are significantly less comfortable with the concept of reporting than other managers in the District.
- Female employees are less comfortable with the concept of reporting than male employees, but more likely to actually report their concerns.
- Employees who work at desert facilities are less comfortable with the concept of reporting than other employees.

To learn more about these trends, we asked interviewees whether they had experienced retaliation after making a complaint, or knew of another employee who had been retaliated against. The chart below illustrates that approximately 75% of interviewees responded affirmatively.

**“Have you experienced or observed retaliation after making a complaint?”**



This questioning revealed several insights:

- Female employees are more likely than male employees to have experienced conduct they perceive as retaliation after making a complaint, and female employees who work at desert facilities unanimously reported such experiences.
- Managers are significantly less likely to report retaliation than rank-and-file employees.

- Approximately 54% of interviewees who experienced conduct they perceived as retaliation have worked at the District for more than 16 years. Only two such interviewees (4%) have worked for the District for five or fewer years.
- Approximately 56.5% of the alleged incidents reported by interviewees occurred in 2020 or 2021.
- Approximately 42% of interviewees reported that the District withheld a promotion because of their complaint.

As we discussed in **Section VI.A.2.** above, 33% of the District's EEO cases from 2015 to present included a retaliation claim.

If the District implements the recommendations detailed in **Sections VI.A. and B.** above, District employees will be less likely to experience EEO Issues, and more likely to report if they become aware of EEO Issues.

In addition, we recommend the District take the additional steps outlined below.

**Implement a District-wide communication program regarding what conduct may constitute retaliation under the District's policy, and the District's commitment to protecting employees from retaliation.**

Engaging in protected activity, including submitting an EEO complaint, does not give an employee a "free pass" on poor performance or misconduct. Nor does it relieve the employee's manager of their duty to manage. However, after employees engage in protected activity, they often interpret as retaliation any action that they perceive as negative.

The District should implement a communication program to educate employees about what conduct does, and does not, constitute retaliation. There may be circumstances in which a manager must take reasonable and necessary action to manage an employee's work performance during and after an investigation. The action is not considered retaliation unless it was intended to punish the employee because of the protected activity. The program also should advise managers who are the respondent in a complaint to consult with their HR Strategic Partner about how to continue managing an employee during and after an investigation.

**Strictly limit the dissemination of information regarding internal complaints of potential EEO Issues.**

Some employees absolutely must know about internal complaints. For example, the EEO Officer must collaborate with Employee Relations to implement appropriate corrective action and restorative practices. However, the District should ensure that investigation reports and information about complaints is disseminated only on a true "need to know" basis. The fewer people who know about the complaint, the smaller the chances are that someone will retaliate against the complainant or anyone else involved in the complaint process.

Additionally, on a regular basis, the District should reinforce the expectation that employees in confidential positions must not discuss complaints with anyone who does not need to know about them.

**Establish a system to ensure that the EEO Office maintains ongoing communication with the complainant(s) and the respondent(s) during an investigation.**

Ongoing communication with the complainant(s) and the respondent(s) during an investigation reduces anxiety, builds trust, and decreases the likelihood of retaliation against the parties and other participants in investigations. The EEO Office should establish a system to ensure such communication happens at regular intervals.

As a standard procedure, the EEO Office should explain to complainants what is, and is not, considered retaliation, and encourage complainants to report anything that happens that the employee considers adverse.

It is appropriate for the employees in the EEO Office to have empathy with both complainants and respondents. It is natural for a respondent to be upset about being the subject of a complaint. The EEO Office should coach respondents to view the complaint as an indication of a problem that needs to be solved, not a personal attack. Remind respondents that employees have a right to complain, the District has an obligation to investigate the complaint, and the respondents will have an opportunity to tell their side of the story.

The District's existing practice of scheduling meetings or calls with complainants and respondents to deliver opening/closing memoranda and answer questions encourages trust between the EEO Office and employees. We encourage the District to continue this best practice.

**Inform every employee interviewed during an investigation that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.**

As a standard procedure, EEO investigators should inform every employee interviewed during an investigation that confidentiality is expected. Explain that when employees talk about the investigation, it could increase the chances of retaliation, and compromise the integrity of the investigation.

Additionally, EEO investigators should inform interviewees that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.

**D. Recommendations Regarding Board of Directors' Oversight of the Issues and Concerns Addressed in this Report**

We recommend that the Board take the steps outlined below regarding the Board's oversight of the issues and concerns discussed in this Report.

**Require the District to provide monthly and annual reports to the OP&T Committee that include quantitative data regarding EEO Issues.**

As discussed further below, the District provides the Board and Board committees a considerable amount of information regarding HR issues and personnel matters. However, the District currently does not provide reports on EEO Issues, except as requested. We recommend that the Board require the District to provide quantitative data on EEO Issues to the OP&T Committee on a monthly and annual basis.

The Ethics Office's monthly report to the Board's Audit and Ethics Committee currently includes data regarding the number and general nature of complaints received, investigations opened, and investigations pending. The EEO Office should provide a similar monthly report to the OP&T Committee.

On September 15, 2020, and November 9, 2020, the EEO Office provided information requested by the Board regarding EEO cases over a given period of time, including aggregate data regarding the basis of the complaints, complainant demographics, and investigation results (i.e., substantiated or unsubstantiated).<sup>69</sup> The EEO Office should provide to the OP&T Committee an annual report with similar information for EEO complaints made each calendar year. In addition to the type of information provided in the September 15, 2020, and November 9, 2020, reports, the annual report should include data on the average length of time to resolve complaints, and a summary of any disciplinary actions taken.

Reports should include quantitative data only, and should not include the names of any of the employees involved or details of the complaint beyond the general nature (e.g., sexual harassment, age discrimination, etc.).

**Require the District to obtain education and employment verifications for external candidates selected through the recruitment process for employment with the District.**

For each position in the District, HR prepares a job description that specifies the minimum qualifications for the position, such as a specific educational degree, years of experience, or mandatory certificates or licenses. Our interviews with employees revealed that some employees believe the District hires or promotes candidates who are not qualified for their position because

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<sup>69</sup> The EEO case results the District reported generally are similar to the results of our analysis discussed above. However, where we noted the results were "mixed," the District reported the results as "unsubstantiated."

the District accepts candidates' representations of their education or experience on employment applications as true, without verifying said information.

HR runs background checks (i.e., criminal history) on external applicants who are selected through the recruitment process for employment with the District. However, we were unable to determine whether the background check process includes education and employment verifications (e.g., obtaining verification from former employers, educational institutions, and licensing bodies that the information applicants provided to the District is accurate). If the District's background checks do not include verifications, the District should consider adding verification services to its background check requests, or assign this function to an employee on the recruiting team.

**Continue to evaluate the District's recruiting policies and procedures, including for the Apprenticeship program, and recommend adjustments as appropriate.**

As discussed in **Section VI.A.1.b.** above, some employees believe the District engages in unfair hiring practices, particularly with regard to promotions and transfers. However, we generally found little merit to these concerns. Other than the issues already discussed in this Report, we do not see substantial problems with the District's recruitment processes for the Apprenticeship program or other District positions.<sup>70</sup>

As previously discussed, the District has made significant improvements to its processes in recent years, including implementing procedures to support a fair process. For example, managers do not have access to the transfer list; hiring managers are discouraged from participating on the interview panel for the first round of interviews; interview panels pose the same questions to every candidate and score every candidate using the same rubric; panelists' scores must be within one rating level of each other; and hiring managers must complete a "Final Hiring Interview Recommendation" form with narrative justifying their selection for HR to review. However, many employees are unaware of these requirements, and continue to have misconceptions about how the recruiting process works.

The District should continue to evaluate and adjust its recruitment process as needed, and consider ways to clarify misinformation about the process.

**Continue carefully and thoroughly to evaluate information provided by District Leadership that provides insight into patterns of EEO Issues.**

Most Director-interviewees stated that the District provides the Board sufficient information regarding HR issues and personnel matters, and is responsive to Directors' requests for additional data. Our review of reports and presentations provided to the Board corroborated these statements. For example, the "Human Resources" section of the General Manager's monthly

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<sup>70</sup> Many interviewees complained that the recruitment process takes too long. Recommendations to improve the efficiency of the District's recruitment process are beyond the scope of this Review.

report includes “HR Metrics” showing quantitative data regarding headcount, recruitments, job audit requests, and personnel transactions (e.g., hires, promotions, separations, and transfers). The General Counsel’s monthly report includes details about employment-related litigation. The report also lists outside counsel agreements and the purpose for each agreement, including agreements for EEO investigations and HR litigation. Legal’s quarterly report lists settled claims and separation agreements.

Assuming the District complies with our recommendation above to provide additional reporting on EEO Issues, the reports listed above and the new EEO reports in combination provide insight into potential EEO Issues and other working environment issues. Directors, particularly those on the OP&T Committee, are responsible for reviewing the information provided, recognizing trends in the numbers that may indicate an issue, and asking questions.

**Encourage management transparency by providing appropriate support and resources to resolve EEO Issues.**

Several interviewees told us about incidents in which managers felt pressured to withhold negative information from the Board. The majority of these incidents involved pressure from a manager who is no longer employed with the District. However, some employees still sense that managers may be reluctant to share negative information with the Board.

District Leadership and other managers we interviewed overwhelmingly reported that they do not feel pressured to withhold negative information from the Board. To the contrary, they stated that, although it has not always been the case, Executive Management currently encourages transparency. They generally understand the importance of sharing “good news” and “bad news” with the Board.

It is important that District Leadership and managers have confidence that if they notify the Board of an issue, the Board will collaborate with them in a positive manner to resolve the issue. The Board should be mindful that their response is instrumental in encouraging or discouraging transparency.

**Continue to be mindful of the Board’s role related to EEO Issues and the District’s day-to-day operations.**

Although District Leadership should keep the Board apprised of key developments and the resolution of high-profile EEO Issues that have long-term effects on the District, the Board should not be involved in the District’s day-to-day operations or its EEO processes.

**Require Directors to model professionalism and respectful behavior at all times, and reinforce these expectations on a regular basis.**

It is unhealthy for members of a Board to always be on the same page; robust debate of issues is necessary for a Board to do its important work. Directors who express strong opinions do

so because they care. However, a Board cannot progress beyond debate and make reasoned decisions when the debate becomes overly heated.

It is apparent that in-fighting on the Board is perpetuating the District's culture and working environment challenges, and damaging the District's reputation. It is difficult for employees to feel confident about the District's commitment to change when the Board is factionalized.

We recommend the Chairwoman of the Board take additional steps to re-establish trust and encourage a more cohesive Board, and the District should provide support and resources as needed to support the Chairwoman's efforts.<sup>71</sup>

**Designate a committee and allocate funds for the District to implement the recommendations detailed in this Report.**

Although some of the recommendations in this Report are simple, many are complex, and span multiple areas of responsibility. The Board should designate a committee to request and review the District's response to each recommendation, allocate funds for the District to implement the recommendations the Board chooses to accept, and track the District's progress on implementing the accepted recommendations.

**Conduct an annual employee survey for at least the next five years to evaluate the District's progress in implementing the recommendations in this Report, and the effectiveness of those recommendations.**

If nothing else, we learned in this Review that most District employees—even the unhappy ones—are committed to the mission of providing safe, reliable drinking water to Southern California. They know they deserve a workplace that allows them to contribute to this mission while being treated with dignity and respect, and they want to be heard when that is not happening.

The issues that triggered this Review are serious, and require a genuine and sustained response. The District cannot consider the issues resolved once it has completed implementation of the recommendations in this Report. Conducting an annual employee survey will help the District ensure that changes are effective, and reveal any unintended consequences or new issues. Further, soliciting feedback generates trust and shows genuine interest in the well-being of the employees.

## **VII. OTHER ISSUES RAISED**

In this section, we provide a brief summary of additional issues raised by employees during the course of the Review. We did not make findings or recommendations regarding these issues.

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<sup>71</sup> In the spirit of modeling inclusive language, as recommended elsewhere in this Report, we also recommend that the District refer to Chairwoman Gray as "Chairperson Gray."

**A. Questions Regarding the Board's Motivation**

Several interviewees, including Director-interviewees, speculated that certain Directors “orchestrated” the public comments that triggered this Review in an effort to affect the General Manager recruitment.

**B. Questions Regarding Use of District Resources for Union Activities**

Several interviewees questioned the allocation of District resources to union activities, including the long-term release of employees to work full-time in union leadership positions.

**C. Security Team Investigations**

It is a best practice in workplace investigations for an investigator to “create an environment that maximizes the likelihood of obtaining reliable information.” Investigators should strive to establish a rapport with witnesses to encourage them to fully share all relevant information.

In the course of our Review, we reviewed files related to the District Security Section’s investigation of allegations regarding misconduct by Nash. The files included copies of a document entitled, “Administrative Investigation Statement Guidelines” that witnesses sign. The document establishes the investigator’s “ground rules” for the interview, such as, “Only one of us talks at a time,” and, “I am not here to argue with you or anyone else. If I don’t get your cooperation or if I get nothing but interference, I will just call it a day and let you get further instruction from either your management or the General Counsel.”

This approach to witness interviews is not appropriate in workplace investigations. The combative and condescending tone of the document does not set the tone for productive interviews, and workplace investigators are expected to employ more effective techniques for managing difficult witnesses.

**D. Placement of the Environmental Compliance and Safety and Regulatory Service Functions within the Organizational Structure**

Currently, the District’s Environmental Program Support Team (“EPS”) and Safety and Regulatory Services Team (“SRS”) are in the Operational Safety and Regulatory Services Section within WSO. Both teams serve regulatory compliance functions.

A few interviewees stated that the EPS and SRS should report to the CAO instead, for two reasons. First, they believe reporting to managers within the same group as the functions they regulate is a conflict of interest. Second, they stated that employees in groups outside of WSO, such as Engineering and WRM, do not recognize that they support the entire District, not just WSO.

Although we did not review this issue, at least one manager in WSO raised the issue in the context of disagreeing with this position.

## **E. Safety Issues**

Several employees expressed concern about safety issues in the District, particularly in field facilities. A majority attributed the safety issues to understaffing or a lack of managerial accountability.

One employee complained that SRS defers to managers in the Water Quality Section regarding laboratory safety and chemical hygiene issues, and managers delegate these issues to employees who are unfamiliar with the regulations. The employee believes the District should create appropriate safety protocols (e.g. storage protocols for different kinds of water treatment samples), and train employees on the protocols.

## **VIII. CONCLUSION**

Currently, the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community, although that was not the case historically, and the District has significant work to do.

This Report provides recommendations for promoting a positive working environment, and best practices in responding to employee concerns and preventing retaliation. Attention to these issues cannot be viewed as a distraction from the mission to provide adequate and reliable supplies of high-quality water to Southern California. The water flows as a direct result of the contributions of the District's 1,800-plus employees. If the District is to succeed in its mission, it must focus on creating a safe and respectful workplace for every employee, every day.

Based on the Review data, it appears that the District is committed to preventing future EEO Issues, and encouraging a more positive and respectful working environment. Of course, change takes time, and changing the culture will require effort on the part of everyone at the District.

We wish to thank all of the employees who trusted us with their stories.

Very truly yours



Jennifer Shaw



Brooke Kozak

## **EXHIBIT 1**



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

11/10/2020 Board Meeting

8-2

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## 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

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## 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.

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## 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**

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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)**

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### **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**

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### **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**

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**Option #1**



*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 20<sup>th</sup>, 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

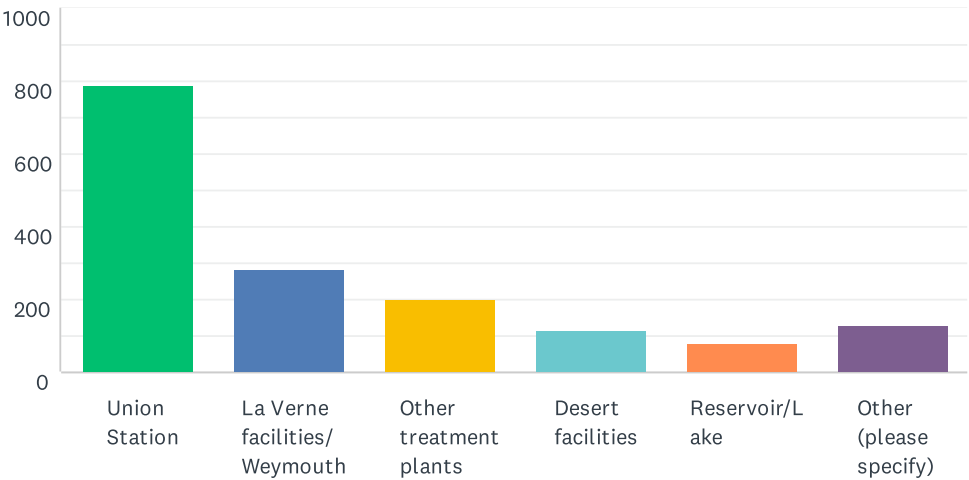
Charles Trevino  
Upper San Gabriel Municipal  
Water District  
Former Employee

Adán Ortega  
City of Fullerton  
Former Employee

## **EXHIBIT 2**

Q1 Where is your primary work location?

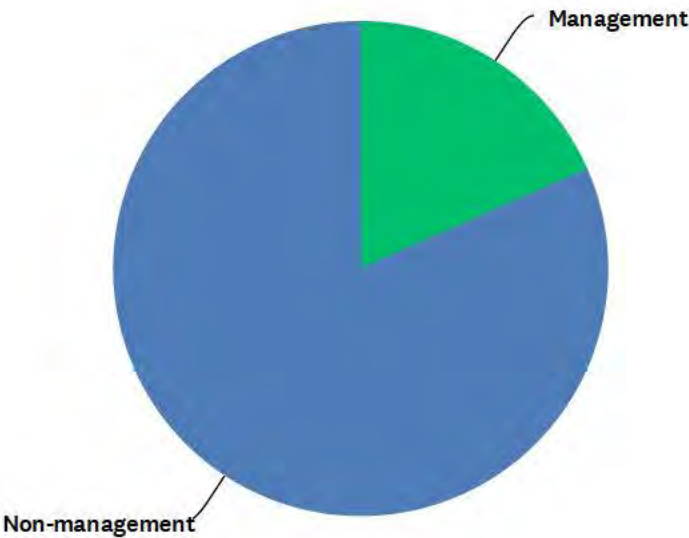
Answered: 1,598    Skipped: 0



ANSWER CHOICES	RESPONSES	
Union Station	49.37%	789
La Verne facilities/Weymouth	17.77%	284
Other treatment plants	12.64%	202
Desert facilities	7.07%	113
Reservoir/Lake	4.88%	78
Other (please specify)	8.26%	132
TOTAL		1,598

Q2 Are you in a management or non-management position?

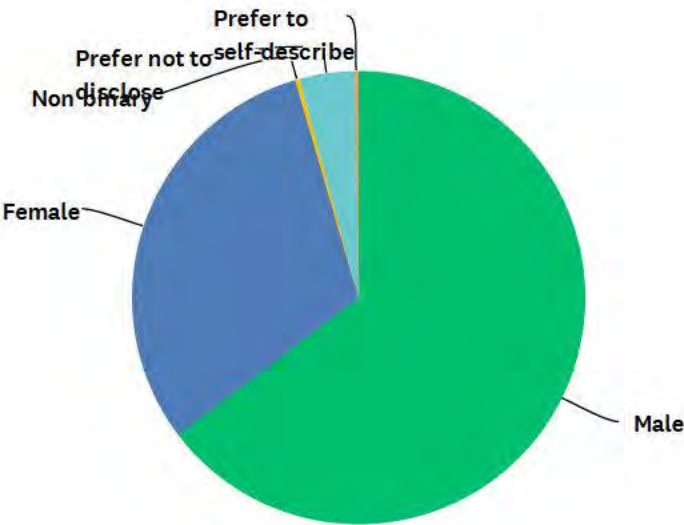
Answered: 1,598    Skipped: 0



ANSWER CHOICES	RESPONSES	
Management	18.40%	294
Non-management	81.60%	1,304
TOTAL		1,598

Q3 Which of the following best describes your gender?

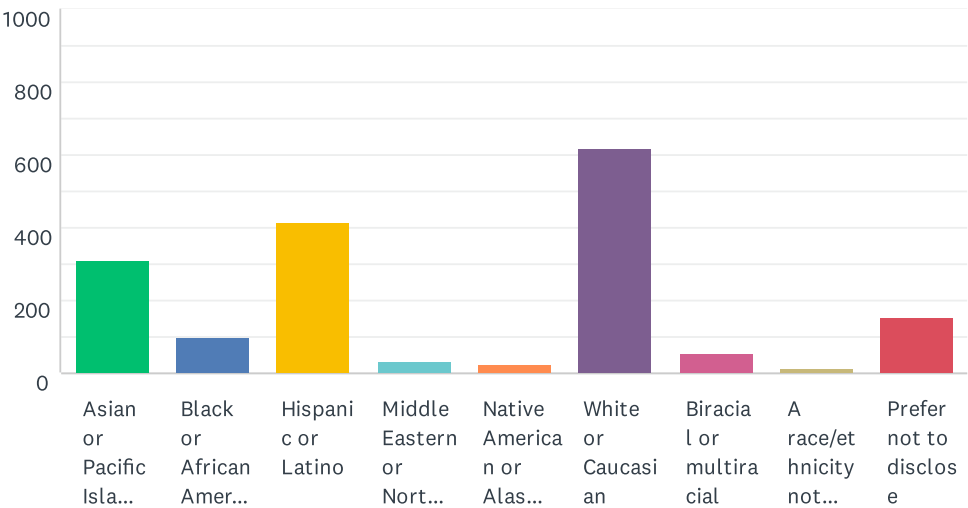
Answered: 1,598    Skipped: 0



ANSWER CHOICES	RESPONSES	
Male	64.64%	1,033
Female	30.85%	493
Non-binary	0.31%	5
Prefer not to disclose	3.94%	63
Prefer to self-describe	0.25%	4
TOTAL		1,598

Q4 Which of the following best describes your race/ethnicity? (Please select all that apply)

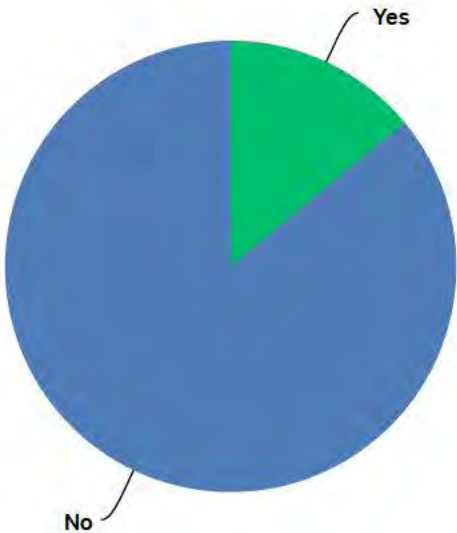
Answered: 1,598 Skipped: 0



ANSWER CHOICES	RESPONSES	
Asian or Pacific Islander	19.34%	309
Black or African American	6.32%	101
Hispanic or Latino	26.10%	417
Middle Eastern or North African	2.13%	34
Native American or Alaskan Native	1.50%	24
White or Caucasian	38.80%	620
Biracial or multiracial	3.38%	54
A race/ethnicity not listed here	0.88%	14
Prefer not to disclose	9.70%	155
Total Respondents: 1,598		

Q5 In the last 3 years, have you had any experiences at Metropolitan during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?

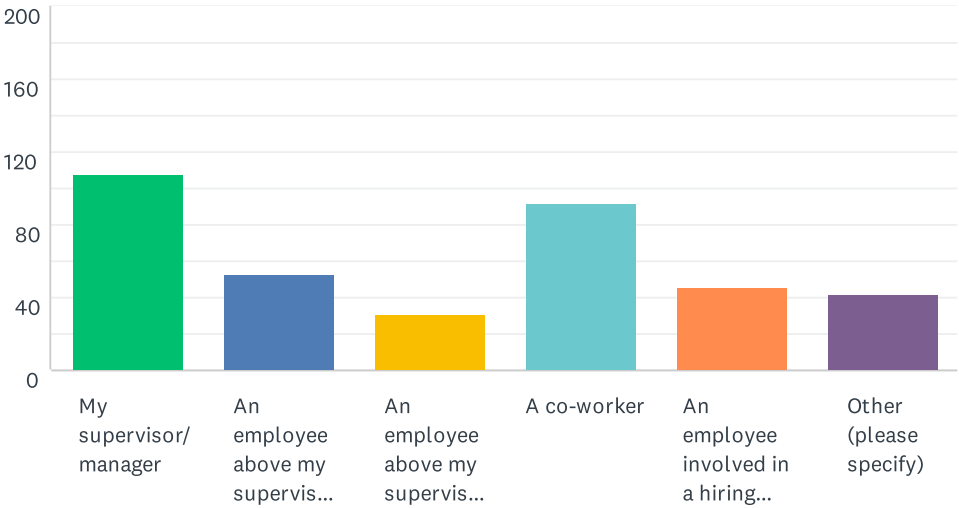
Answered: 1,590    Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	14.03%	223
No	85.97%	1,367
TOTAL		1,590

Q6 Who treated you unfairly? (Please select all that apply)

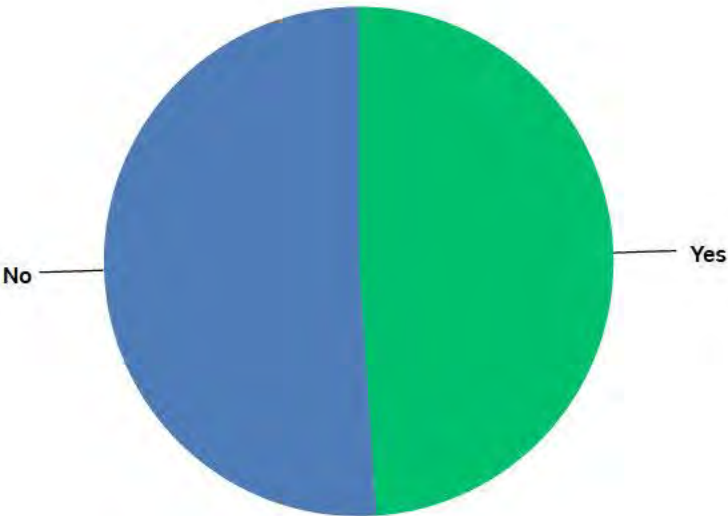
Answered: 229    Skipped: 1,369



ANSWER CHOICES	RESPONSES	
My supervisor/manager	47.16%	108
An employee above my supervisor/manager in the chain-of-command	23.14%	53
An employee above my supervisor/manager outside the chain-of-command	13.54%	31
A co-worker	40.17%	92
An employee involved in a hiring or promotional decision	20.09%	46
Other (please specify)	18.34%	42
Total Respondents: 229		

Q7 Did you report your experience to anyone at Metropolitan?

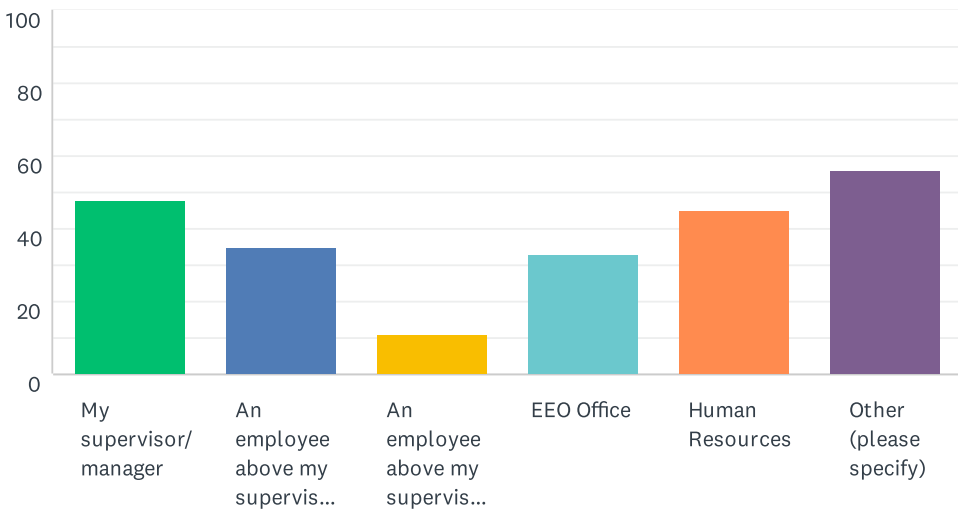
Answered: 229    Skipped: 1,369



ANSWER CHOICES	RESPONSES	
Yes	48.91%	112
No	51.09%	117
TOTAL		229

Q8 To whom did you report your experience? (Please select all that apply)

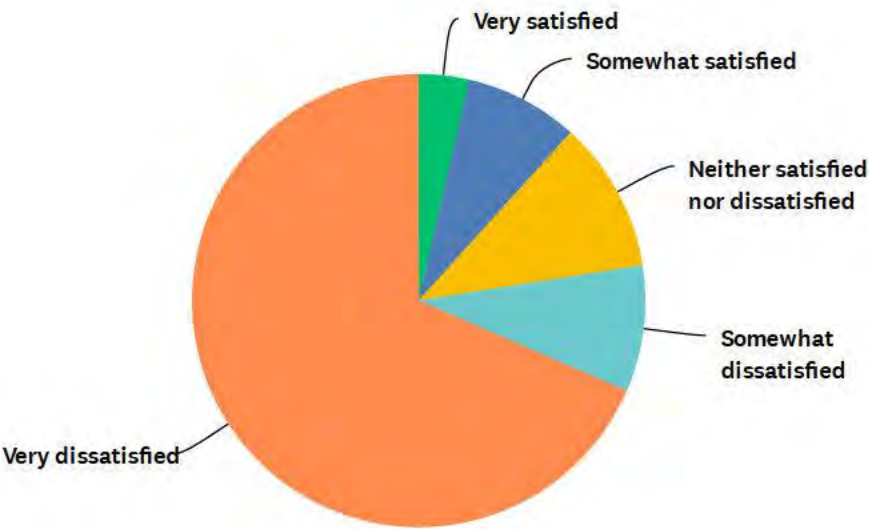
Answered: 111    Skipped: 1,487



ANSWER CHOICES	RESPONSES	
My supervisor/manager	43.24%	48
An employee above my supervisor/manager in the chain-of-command	31.53%	35
An employee above my supervisor/manager outside the chain-of-command	9.91%	11
EEO Office	29.73%	33
Human Resources	40.54%	45
Other (please specify)	50.45%	56
Total Respondents: 111		

Q9 How satisfied or dissatisfied are you with the way Metropolitan responded to your report?

Answered: 111    Skipped: 1,487



ANSWER CHOICES	RESPONSES	
Very satisfied	3.60%	4
Somewhat satisfied	8.11%	9
Neither satisfied nor dissatisfied	10.81%	12
Somewhat dissatisfied	9.01%	10
Very dissatisfied	68.47%	76
TOTAL		111

## Q10 Please explain.

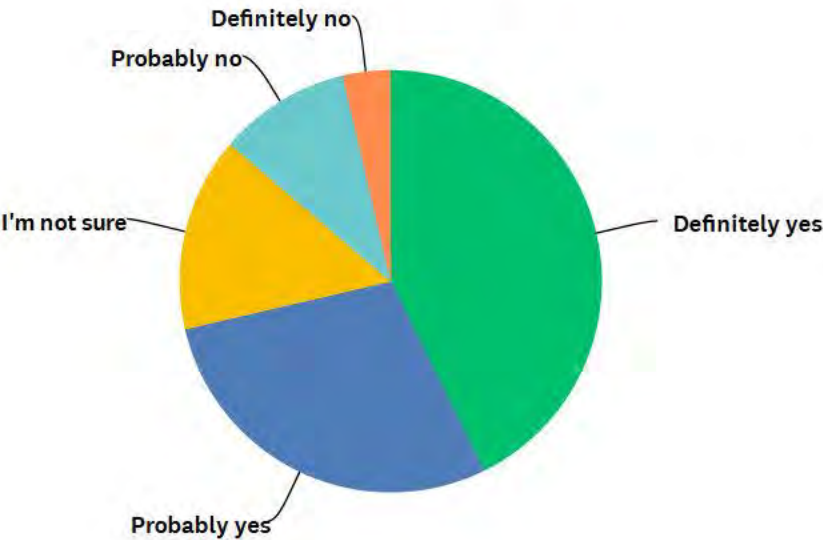
Answered: 111   Skipped: 1,487

## Q11 Why did you decide not to report your experience to anyone at Metropolitan?

Answered: 110   Skipped: 1,488

Q12 Would you feel comfortable reporting unfair treatment at work?

Answered: 1,344    Skipped: 254



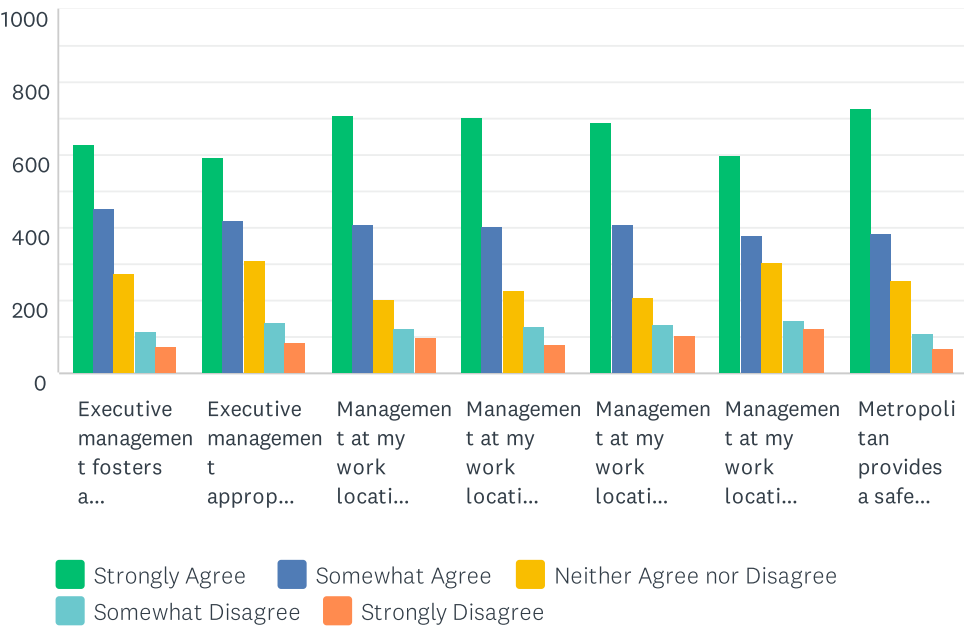
ANSWER CHOICES	RESPONSES	
Definitely yes	42.71%	574
Probably yes	28.65%	385
I'm not sure	14.88%	200
Probably no	10.12%	136
Definitely no	3.65%	49
TOTAL		1,344

## Q13 Please explain.

Answered: 1,344   Skipped: 254

Q14 To what extent do you agree or disagree with the following statements?

Answered: 1,552 Skipped: 46

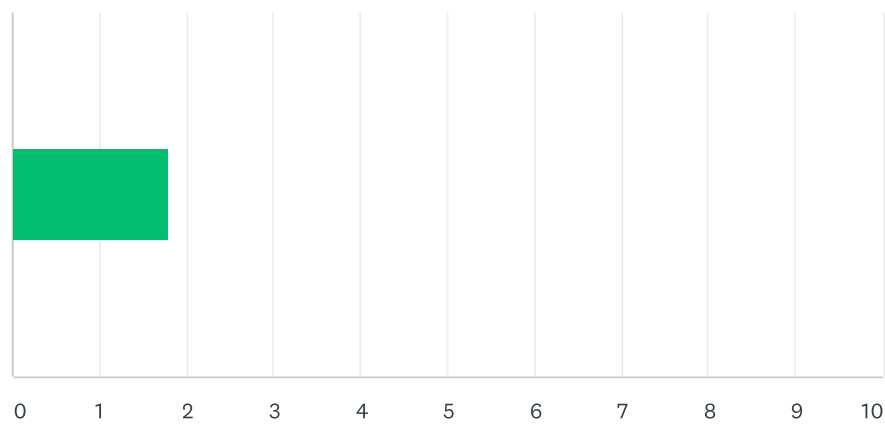


Confidential Workplace Assessment for Metropolitan Water District Employees

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOR DISAGREE	SOMEWHAT DISAGREE	STRONGLY DISAGREE	TOTAL	WEIGHTED AVERAGE
Executive management fosters a positive working environment.	40.72% 632	29.25% 454	17.85% 277	7.47% 116	4.70% 73	1,552	2.06
Executive management appropriately follows and enforces Metropolitan's policies and procedures.	38.27% 594	27.06% 420	19.97% 310	9.09% 141	5.61% 87	1,552	2.17
Management at my work location fosters a positive working environment.	45.68% 709	26.48% 411	13.14% 204	8.18% 127	6.51% 101	1,552	2.03
Management at my work location appropriately follows and enforces Metropolitan's policies and procedures.	45.43% 705	26.10% 405	14.88% 231	8.51% 132	5.09% 79	1,552	2.02
Management at my work location is open to employees' concerns.	44.46% 690	26.29% 408	13.66% 212	8.83% 137	6.77% 105	1,552	2.07
Management at my work location takes appropriate action to address employees' concerns.	38.60% 599	24.42% 379	19.52% 303	9.47% 147	7.99% 124	1,552	2.24
Metropolitan provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees.	47.04% 730	24.81% 385	16.43% 255	7.22% 112	4.51% 70	1,552	1.97

Q15 Based on your experience at Metropolitan, how likely are you to recommend family and friends apply to work there?

Answered: 1,552    Skipped: 46



ANSWER CHOICES	AVERAGE NUMBER	TOTAL NUMBER	RESPONSES
	2	2,797	1,552
Total Respondents: 1,552			

## Q16 What changes, if any, would improve the overall culture at Metropolitan?

Answered: 1,184   Skipped: 414

## Q17 What changes, if any, would improve the culture at your work location?

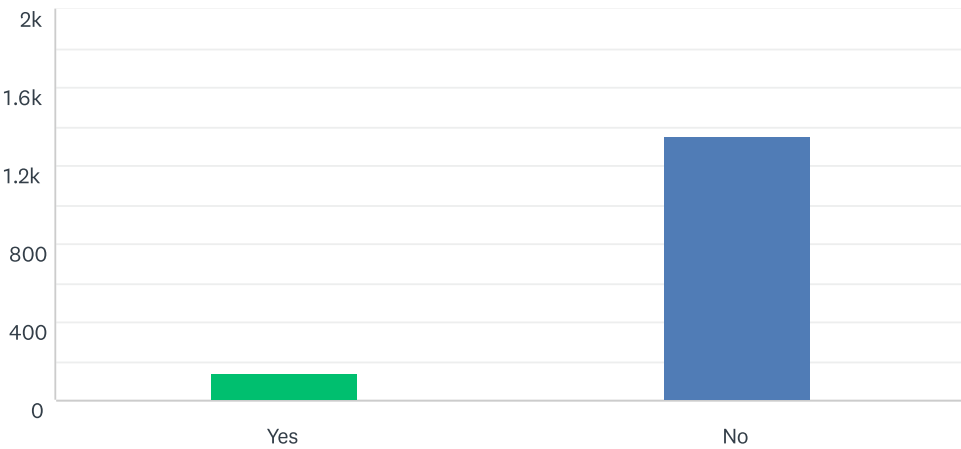
Answered: 1,100   Skipped: 498

## Q18 Is there any other information you would like to provide as part of this survey?

Answered: 984   Skipped: 614

Q19 Do you have any additional information you would like to share with our investigators?

Answered: 1,484    Skipped: 114



ANSWER CHOICES	RESPONSES	
Yes	9.16%	136
No	90.84%	1,348
TOTAL		1,484

**Q20 Please provide your name and an email address or phone number where we may contact you. (You do not need to use your Metropolitan email.) If you do not wish to provide this information, you may contact us directly at: Shaw Law Group, [PCMWDSurvey@shawlawgroup.com](mailto:PCMWDSurvey@shawlawgroup.com) (916) 640-2240**

Answered: 129    Skipped: 1,469

ANSWER CHOICES	RESPONSES	
Name	99.22%	128
Company	0.00%	0
Address	0.00%	0
Address 2	0.00%	0
City/Town	0.00%	0
State/Province	0.00%	0
ZIP/Postal Code	0.00%	0
Country	0.00%	0
Email Address	93.02%	120
Phone Number	92.25%	119

## **EXHIBIT 3**

## **LIST OF DOCUMENTS REVIEWED**

We reviewed over 24,000 pages of documents and other evidence that informed the recommendations set forth in this Report. Key documents are listed below. Consistent with our representations to employees regarding confidentiality, many of the documents we reviewed (e.g., EEO case files, emails from employees) are not listed here.

<b>District Documents</b>	<b>Dates</b>
<b>Organizational Documents</b>	
District “Organization Charts”	February 2020
District flowchart regarding “Transfer Process”	June 2020
District flowchart regarding “Recruitment and Selection Process”	June 2020
District “Biennial Budget Fiscal Years 2020/21 and 2021/22”	July 2020
District “Master Transfer List”	May 18, 2021
“DE&I Initiative” organizational chart	Undated
<b>Policies and Procedures</b>	
District “Equal Employment Opportunity Discrimination Complaint Procedures”	July 1, 2011
Operating Policy H-04 “Violence in the Workplace”	January 14, 2003
Operating Policy H-10 “Recruitment Policy”	January 12, 2005
Operating Policy H-11 “Job Analysis/Job Audit”	December 19, 2005
Operating Policy H-03 “Ethics Policy”	April 27, 2009
Operating Policy H-07 “Equal Employment Opportunity”	November 5, 2012
Operating Policy H-13 “Sexual Harassment Prohibition Policy”	May 3, 2013
Memorandum of Understanding Between the District and MAPA	February 28, 2017
Memorandum of Understanding Between the District and Supervisor’s Association	May 31, 2017
Memorandum of Understanding Between the District and ACE	June 19, 2017
Memorandum of Understanding Between the District and AFSCME	October 11, 2017
Metropolitan Water District Administrative Code	August 18, 2020
District “Conflict of Interest Questionnaire for Recruitment Panel Members”	Undated

## **LIST OF DOCUMENTS REVIEWED**

<b>District Documents</b>	<b>Dates</b>
<b>Memoranda</b>	
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Diversity, Equity and Inclusion”	June 18, 2020
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Correspondence Standards and Use of Electronic Signature Standard”	July 6, 2020
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Employee Public Comments at 10/13/20 OP&T and Board Meetings”	October 20, 2020
Memorandum from Jeffrey Kightlinger to “Board of Directors” regarding “Employee Public Comments at 10/13/20 OP&T and Board Meetings”	October 26, 2020
Memorandum from Jeffrey Kightlinger to “All Employees” regarding “Additional Resources and Information Regarding MWD Employee Concerns”	March 3, 2021
Memorandum from Jeffrey Kightlinger to “Board of Directors” regarding “Employee Petition”	March 9, 2021
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Employee Petition”	March 11, 2021
<b>Presentations, Notes, and Reports</b>	
District report regarding “Succession Planning Workforce Excellence”	undated
District “2019 Ethics Survey”	undated
District presentation to the OP&T Committee regarding “Equal Employment Opportunity: Preventing Workplace Harassment and Discrimination”	April 9, 2019
District presentation to the OP&T Committee regarding “Equal Employment Opportunity Program Update”	July 8, 2019
“Legal Department Quarterly Reports” to the Board	February 11, 2020- May 11, 2021
District presentation to the Audit & Ethics Committee regarding “2019 Ethics Survey Results”	February 25, 2020
Audio files and transcripts, and related written submissions, of public comments to the Board and relevant committees of the Board, including the OP&T Committee	March 2020- June 2021

## **LIST OF DOCUMENTS REVIEWED**

<b>District Documents</b>	<b>Dates</b>
District presentation to the Audit & Ethics Committee regarding "Ethics Survey Results Part 2"	June 23, 2020
DE&I Council meeting notes	August 19, 2020- April 7, 2021
District presentation to the OP&T Committee regarding "Equal Employment Opportunity Program Update"	September 15, 2020
District report to the OP&T Committee regarding "Semi Annual Report on EEO Policy and Affirmative Action Plan"	September 15, 2020
District presentation to the OP&T Committee regarding "Update on Equal Employment Opportunity Issues"	September 15, 2020
District presentation to the Audit & Ethics Committee regarding "Supplemental Analysis of the 2019 Ethics Survey"	October 27, 2020
District presentation to the OP&T Committee regarding "Report on Females in Apprenticeship Program and Trades"	October 27, 2020
District presentation to the OP&T Committee regarding "Diversity Equity and Inclusion Council Update"	October 27, 2020
District report to the OP&T Committee regarding "Follow-up on Equal Employment Opportunity issues"	November 9, 2020
District presentation to the OP&T Committee regarding "Diversity Equity and Inclusion Update"	December 7, 2020
"General Counsel's Monthly Activity Reports" to the Board	January 12, 2021- June 8, 2021
"Ethics Office Monthly Reports" to the Board	January 12, 2021- June 8, 2021
District presentation to Metropolitan Management University participants regarding "Avoiding Litigation Landmines for [District] Managers: Top 10 Ways"	January 19, 2021
District presentation to the OP&T Committee regarding "Diversity, Equity and Inclusion (DE&I) Council Update"	February 9, 2021
District presentation to the OP&T Committee regarding "Human Resources and Ethics Office Roles in Addressing Complaints"	March 8, 2021
District presentation to the OP&T Committee regarding "Diversity, Equity and Inclusion (DE&I) Council Update"	April 12, 2021

### **LIST OF DOCUMENTS REVIEWED**

<b>District Documents</b>	<b>Dates</b>
District presentation to the OP&T Committee regarding “Diversity, Equity and Inclusion (DE&I) Council Update”	June 8, 2021
District report to the OP&T Committee regarding “Semi-Annual Report on EEO Policy and Affirmative Action Plan”	July 13, 2021

<b>Third-Party Documents</b>	<b>Dates</b>
Report regarding “Metropolitan Water District of Southern California: Its Administrative Controls Need to Be Improved to Ensure an Appropriate Level of Checks and Balances Over Public Resources,” prepared by the California State Auditor	June 3, 2004
“Workforce Demographic Comparison,” prepared by Biddle Consulting Group, Inc.	November 18, 2020
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “‘They thought I was so low’: Women say they were harassed, bullied, ignored at powerful water agency”	February 12, 2021
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “He was the king of water in the desert. His abusive reign revealed a troubling culture”	March 18, 2021
<u>Los Angeles Times</u> article by Sammy Roth entitled, “As drought worsens, tensions erupt over control of SoCal’s largest water supplier”	May 26, 2021
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “State launches audit of sexual harassment policies at powerful Southern California water agency”	June 30, 2021

## ISSUE BRIEF #C

**SUBJECT: MET Integrated Resources Plan Update**

### **RECENT ACTIVITY**

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At the July 27 Integrated Water Resources Plan (IRP) Committee meeting, the Metropolitan staff presentation reviewed the key scenario assumption refinements and began discussion on the portfolio planning approach. Metropolitan staff also highlighted the framework for the performance measures and next steps.

### **Key Scenario Assumptions**

The scenario assumptions were refined through the interactions with the expert panels and Member Agency technical feedback. The gap analyses and subsequent portfolios will be based on the refined input assumptions. The key scenario assumption refinements are noted below:

PRELIMINARY	REFINED
<ul style="list-style-type: none"> <li>● Climate migration support for high growth</li> <li>● Generalized rebound assumptions</li> <li>● Approximated scenario driver impacts to local supplies using economic conditions and professional judgement</li> <li>● Imported supply assumptions used recent USBR/DWR modeling with scenario considerations</li> </ul>	<ul style="list-style-type: none"> <li>● CCSCE's demographic forecasts</li> <li>● Rebound is a result of driver impacts: structural and behavioral</li> <li>● Incorporated feedback from climate change experts and member agency engagement groups for local supplies</li> <li>● Utilized expert input to identify climate impacts on imported watersheds</li> </ul>

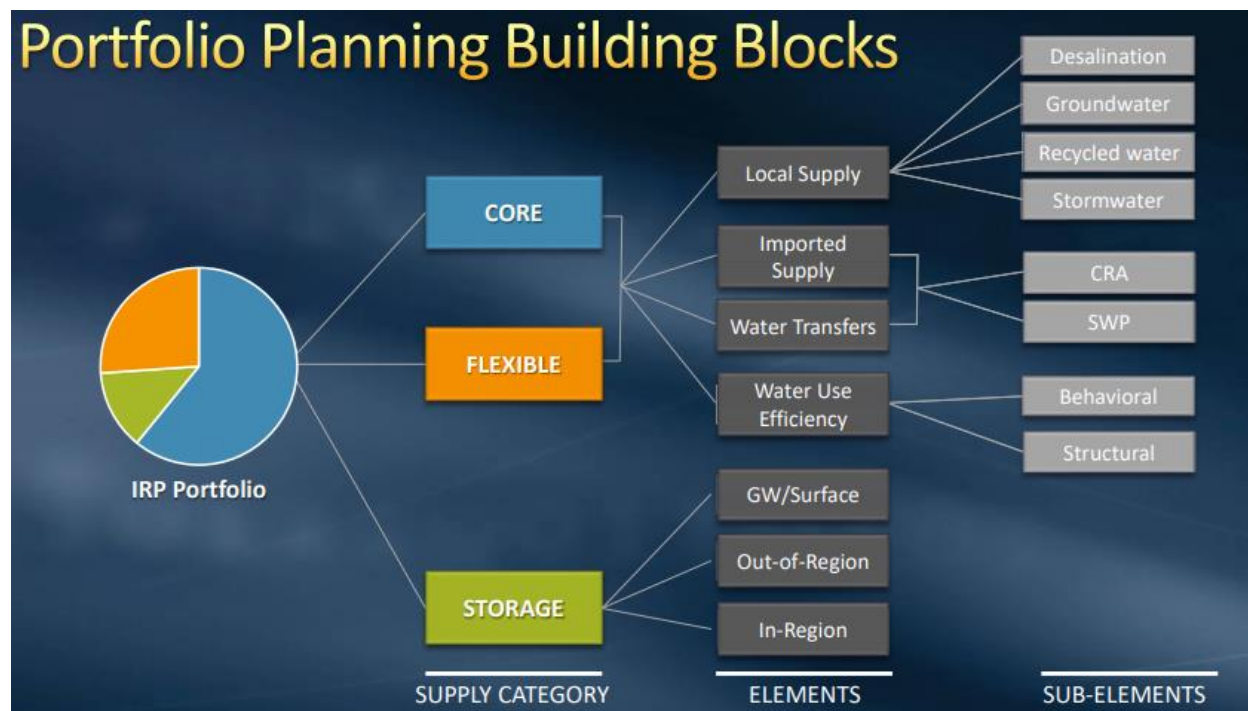
### **Portfolio Planning**

The portfolio planning approach begins with the assessment of categories of investments at a high level. A portfolio is the result of a set of investments and actions to meet given objectives over a period of time. It consists of existing supplies and programs, and future investments or actions. For the 2020 IRP, water reliability has been identified as a primary goal, and the time frame is 25 years to 2045.

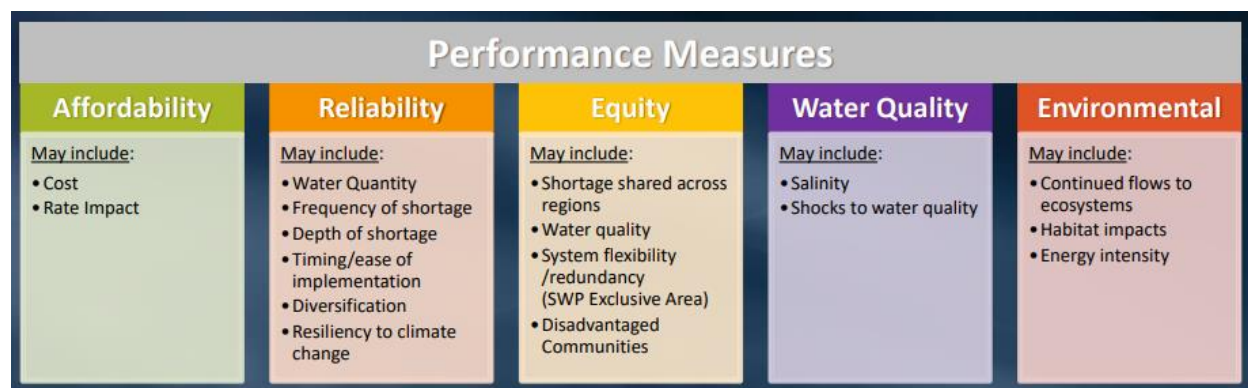
Three portfolio planning categories are identified: Core Supply, Flexible Supply, and Storage. A *core supply* is generally available and used every year to meet demands under normal conditions. It has a high level of reliability and value if used often, otherwise it is expensive. A *flexible supply* is implemented on an as-needed basis and may or may not be available for use each year. It would be considered expensive if used too much or too often, resulting in better value if only used occasionally. *Storage* is the capability to save water supplies to meet demands at a later time. It is the means to convert a core supply into a flexible supply, thereby evening out variability in supply and demand. The portfolio planning categories can be broken into building blocks as illustrated below.

Additionally, a successful portfolio will address reliability challenges, such as areas of the system that are constrained to only State Water Project water, and may need a combination of all three categories.

The portfolio modeling incorporates Metropolitan's Water Surplus and Drought Management (WSDM) Plan, taking into account the programs, facilities, and operations that are currently in place. Considerations include: WSDM actions; put and take capabilities; total storage capacities; and distribution system constraints such as area only served by SWP water.



The portfolio building approach will first identify the desired supply category mix for each scenario and iteratively test the supply category mix to confirm that it addresses the reliability goal. Next, elements and sub-element within each supply category will be decided on. Finally, the portfolios will be evaluated based on set performance measures. Performance measures can pertain to evaluating portfolios and future specific actions.



The next steps will include Metropolitan staff working with Member Agencies to develop portfolio action options. The proposed portfolios (Supply Categories and Elements) and a draft Adaptive Management Plan is anticipated to return to the Board for feedback in September. This Board feedback and policy discussion will help to refine the portfolio actions and the Adaptive Management Plan.

Below is the current proposed schedule:

Month	Member Agency Collaboration	IRP Board Committee
JUL	<ul style="list-style-type: none"> <li>• <b>Portfolio Approach</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Portfolio Approach</b></li> </ul>
AUG	<ul style="list-style-type: none"> <li>• <b>Determine Portfolio Actions</b> Mix of Supply Categories and Elements</li> <li>• <b>Identify Signposts</b> Adaptive Management Strategy</li> </ul>	
SEP	<ul style="list-style-type: none"> <li>• <b>Draft Adaptive Management Plan</b> Mix of Supply Categories and Elements</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Portfolio Recommendation</b> Discuss Policy implications</li> <li>• <b>Review of Adaptive Management Strategy</b> Feedback on approach</li> </ul>
	Public Workshop – Focus on Portfolios	
OCT	<ul style="list-style-type: none"> <li>• <b>Follow-up Items</b> As needed</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Finalize Portfolios and Adaptive Management Strategy</b></li> </ul>
NOV	<ul style="list-style-type: none"> <li>• <b>Review Draft IRP</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Review Draft IRP</b></li> </ul>
DEC		<ul style="list-style-type: none"> <li>• <b>Adopt IRP</b></li> </ul>

More information and background on Metropolitan's IRP can be found at:

<http://www.mwdwatertomorrow.com/IRP/index.html>

## ISSUE BRIEF #D

**SUBJECT: MET's Water Supply Conditions**

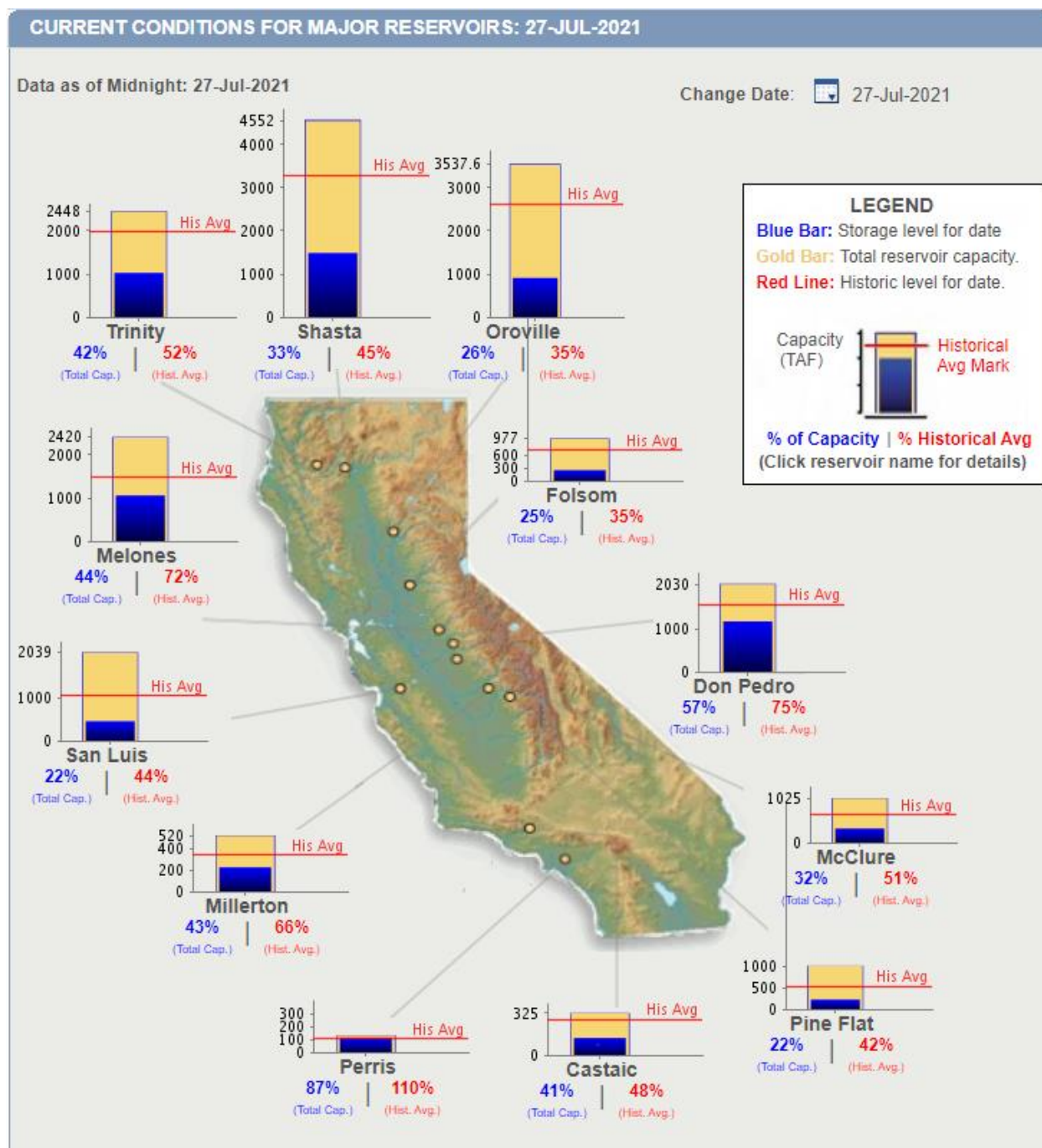
### **RECENT ACTIVITY**

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The 2020-21 Water Year (2020-21 WY) officially started on October 1, 2020. Thus far, the Northern California accumulated precipitation (8-Station Index) is reporting **23.19 inches or 47% of normal** as of July 28th. For 2020-21 WY, the Northern Sierra Snow Water Equivalent peaked at **20.2 inches on March 24th**, which is **71% of normal** for that day. Due to the below average precipitation/snowfall in 2020-21 WY, the Department of Water Resources (DWR) has set the State Water Project (SWP) **"Table A" allocation at 5%**. This allocation provides Metropolitan with approximately **96,575 AF in SWP deliveries this water year**. DWR's SWP Allocation considers several factors including existing storage in SWP, conservation reservoirs, SWP operational regulatory constraints, and the 2021 contractor demands. A Table A allocation of 5% is tied for the lowest allocation dating back to 1968. The last time DWR had a Table A Allocation of 5% was in 2014.

The Upper Colorado River Basin accumulated precipitation is reporting **20 inches or 72% of normal as of July 26th**. On the Colorado River system, snowpack is measured across four states in the Upper Colorado River Basin. The Upper Colorado River Basin Snow Water Equivalent was reporting **16.4 inches as of April 1st**, which is **86% of normal** for that day. Due to the below average precipitation/snowfall in 2020-21 WY, there is now a **97% chance of a shortage at Lake Mead in 2022** and a 94% chance of shortage in 2023.

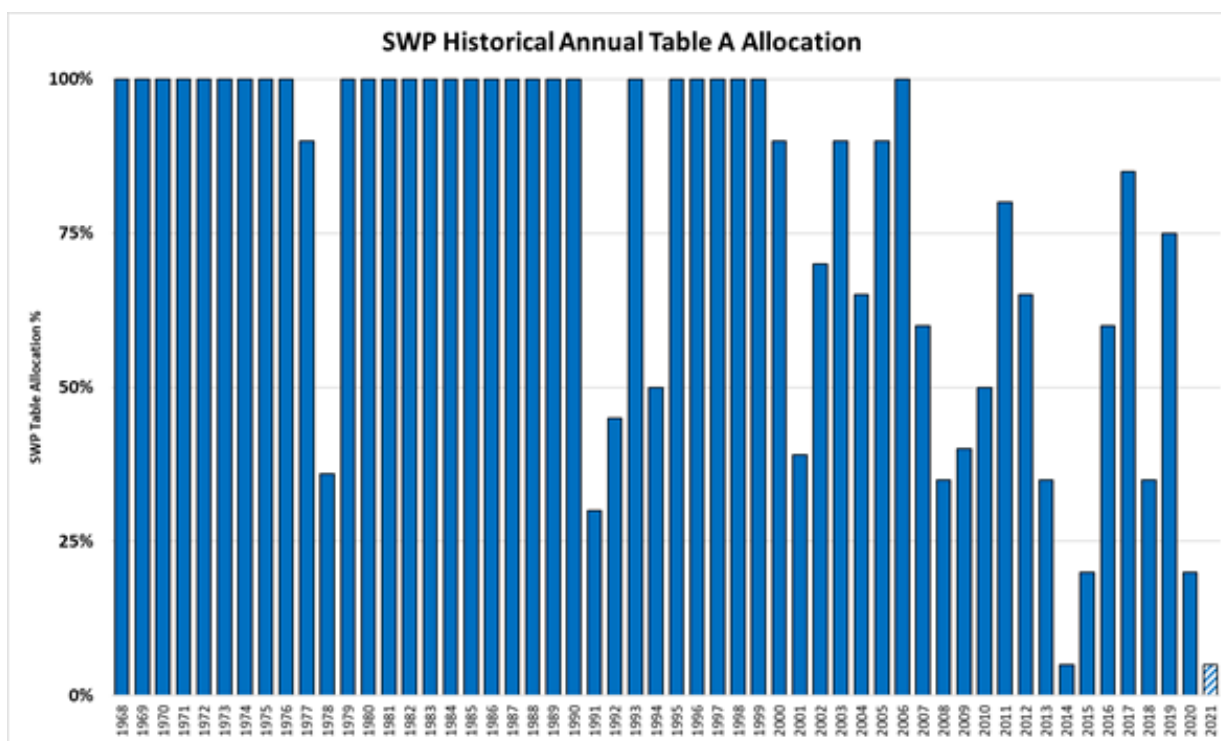
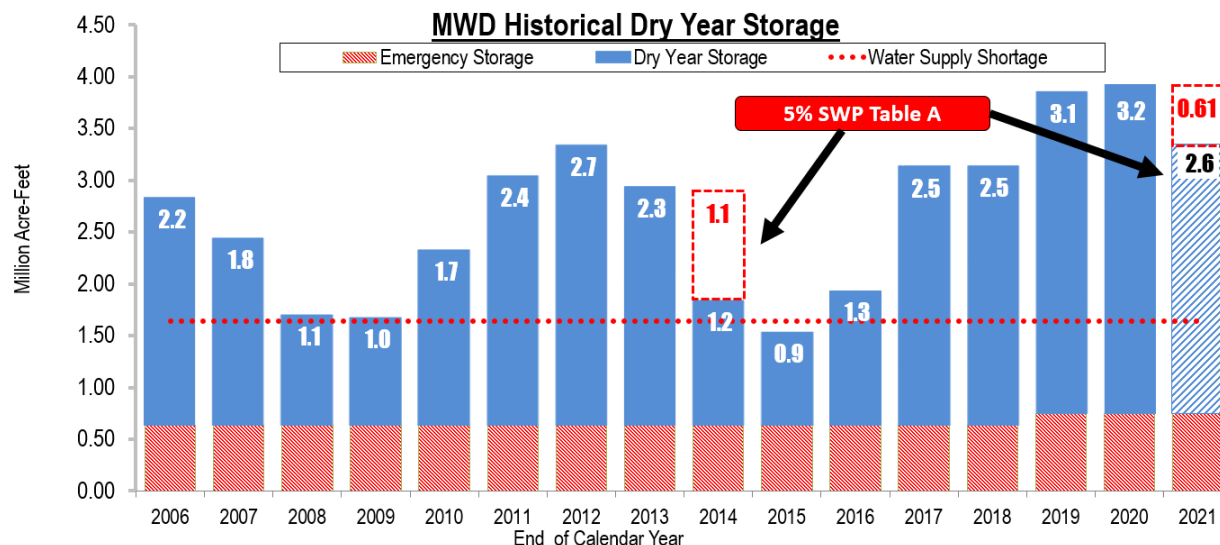
As of July 28th Lake Oroville storage is at **26% of total capacity and 35% of normal**. As of July 28th San Luis Reservoir has a current volume of **22% of the reservoir's total capacity and is 44% of normal**.



With estimated total demands and losses of 1.75 million acre-feet (MAF) and with a 5% SWP Table A Allocation, Metropolitan is projecting that demands will exceed supply levels in Calendar Year (CY) 2021. Based on this, estimated total dry-year storage for Metropolitan at the end of **CY 2021 will go down to approximately 2.6 MAF.**

A projected dry-year storage supply of **2.6 MAF will be the fourth highest amount for Metropolitan, a very impressive accomplishment given that the last two years have been exceptionally dry in Northern California.** A large factor in maintaining a high water

storage level are lower than expected water demands. We are seeing regional water demands reaching a 38-year low.



Attachment: Water Supply Conditions Presentation



## Water Supply Conditions

Kevin Hostert, Water Resources Analyst  
Municipal Water District of Orange County

August 4<sup>th</sup> 2021



## Regional Weather and Water Supply Conditions

Insight to regional weather conditions that affect California's water supply

# California Drought Monitor

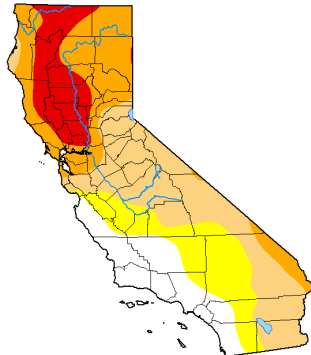
October 2020 = 68% Moderate Drought (D1) in California

October 2020 = 36% Severe to Extreme Drought (D2 to D3) in California

July 2021 = 100% Moderate Drought (D1) in California

July 2021 = 95% Severe to Exceptional Drought (D2 to D4) in California. 85% in Extreme Drought and 33.3% in Exceptional Drought

U.S. Drought Monitor  
California



October 20, 2020  
(Released Thursday, Oct. 22, 2020)  
Valid 8 a.m. EDT

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	15.40	84.60	87.54	35.61	12.74	0.00
Last Week	15.40	84.60	87.54	35.61	12.74	0.00
3 Month Ago	40.34	59.65	48.21	21.50	3.04	0.00
Start of Calendar Year	95.43	3.57	0.00	0.00	0.00	0.00
Start of Water Year	15.35	84.65	87.65	35.62	12.74	0.00
One Year Ago	82.28	17.74	2.95	0.00	0.00	0.00

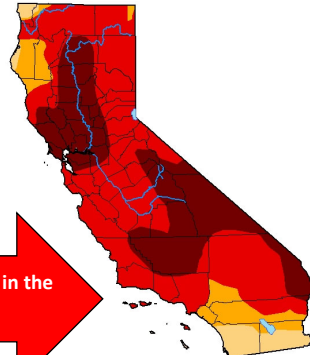
Intensity:  
None  
D0 Abnormally Dry  
D1 Moderate Drought  
D2 Severe Drought  
D3 Extreme Drought  
D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/about.aspx>.

Drought Conditions Strengthen in the 2020-21 "Wet Season"

[droughtmonitor.unl.edu](https://droughtmonitor.unl.edu)

California



(Released Thursday, Jul. 15, 2021)  
Valid 8 a.m. EDT

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	0.00	100.00	100.00	94.75	85.73	33.32
Last Week	0.00	100.00	100.00	94.73	85.44	33.32
3 Month Ago	0.78	99.22	94.14	75.97	38.68	5.36
Start of Calendar Year	0.00	100.00	95.17	74.34	33.75	1.19
Start of Water Year	15.35	84.65	87.65	35.62	12.74	0.00
One Year Ago	40.38	59.62	48.19	21.50	2.45	0.00

Intensity:  
None  
D0 Abnormally Dry  
D1 Moderate Drought  
D2 Severe Drought  
D3 Extreme Drought  
D4 Exceptional Drought

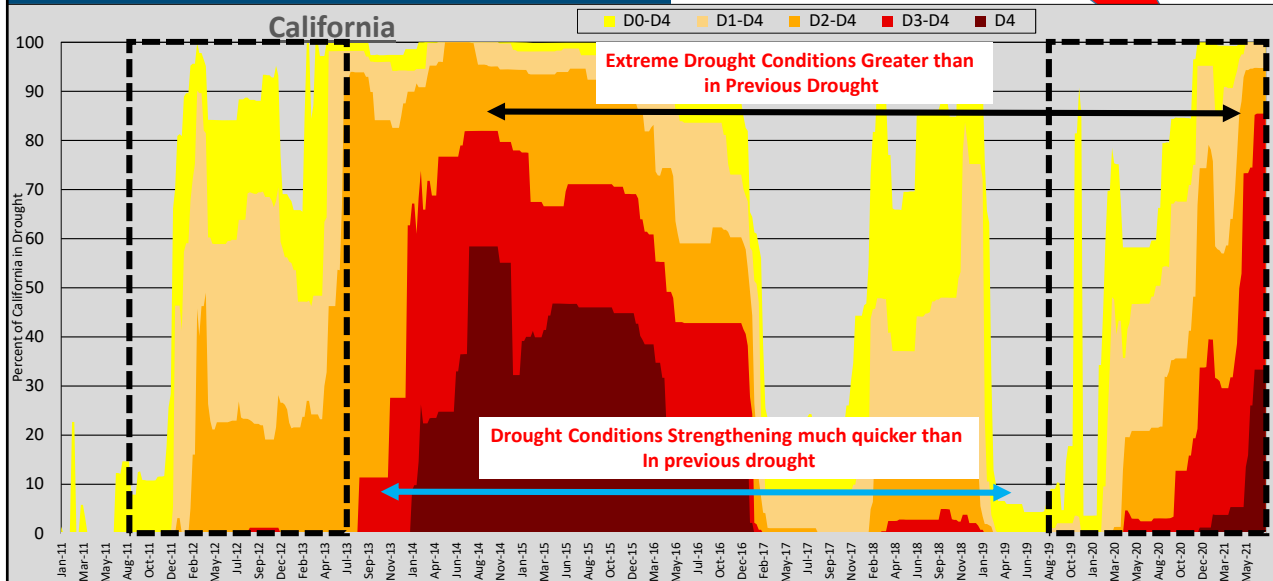
The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/about.aspx>.

Author:  
Adam Hartman  
NOAA/NWS/NCEP/CPC

[droughtmonitor.unl.edu](https://droughtmonitor.unl.edu)

# California Drought Monitor

Current Drought 2020-Present (Extreme Drought developing rapidly in 2021)

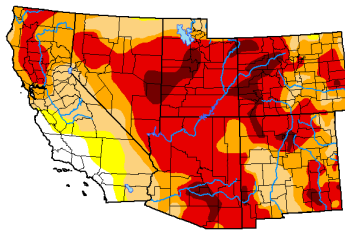


# Southwest Drought Monitor

October 2020 = 92% Moderate Drought (D1+) in Southwest

October 2020 = 74% Severe to Extreme Drought (D2 to D4) in Southwest

U.S. Drought Monitor  
Southwest



**October 6, 2020**  
(Released Thursday, Oct. 8, 2020)  
Valid 8 a.m. EDT

Drought Conditions (Percent Area)

	None	D0-C0	D1-C1	D2-C2	D3-C3	D4
Current	3.51	96.49	82.38	74.77	51.36	7.70
Last Week	3.57	96.43	91.99	73.98	48.23	3.95
3 Months Ago	27.38	72.62	53.60	30.30	7.78	0.00
Start of Calendar Year	65.35	34.65	23.26	12.18	0.00	0.00
Start of Water Year	3.57	96.43	91.99	73.98	48.23	3.95
One Year Ago	53.72	46.28	27.49	9.06	0.00	0.00

**Intensity:**

- None
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/about.aspx>

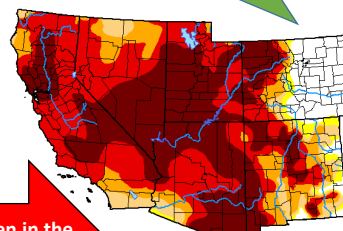
Drought Conditions Strengthen in the 2020-21 "Wet Season"

[droughtmonitor.unl.edu](https://droughtmonitor.unl.edu)

July 2021 = 88% Moderate Drought (D1+) in Southwest

July 2021 = 82% Severe to Exceptional Drought (D2 to D4) in Southwest. 72% in Extreme Drought and 38.7% in Exceptional Drought

U.S. Drought Monitor  
Southwest



**July 13, 2021**  
(Released Thursday, Jul. 15, 2021)  
Valid 8 a.m. EDT

Drought Conditions (Percent Area)

	None	D0-C0	D1-C1	D2-C2	D3-C3	D4
Current	9.42	90.58	88.41	82.43	71.54	38.67
Last Week	8.82	91.18	88.97	83.52	71.64	38.59
3 Months Ago	8.18	98.82	87.31	86.45	64.81	35.71
Start of Calendar Year	0.00	100.00	96.85	91.13	71.59	37.87
Start of Water Year	3.57	96.43	91.99	73.98	48.23	3.95
One Year Ago	20.68	79.32	59.00	30.96	8.94	0.00

**Intensity:**

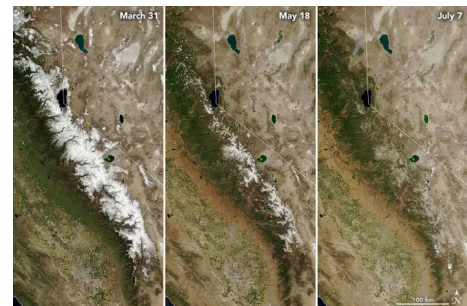
- None
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/about.aspx>

Author:  
Adam Hartman  
NOAA/NWS/NCEP/CPD

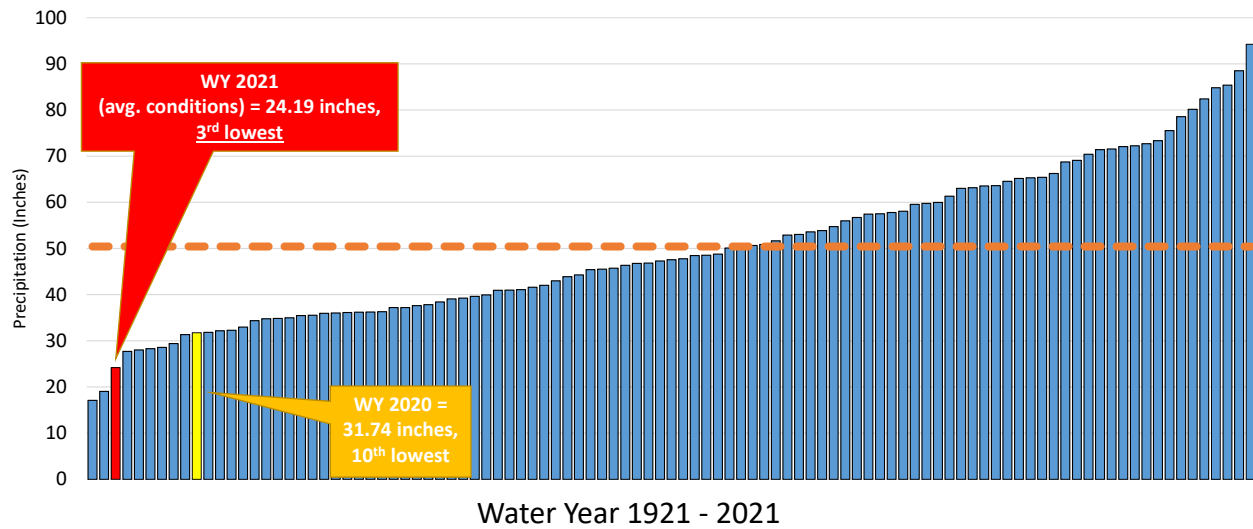
[droughtmonitor.unl.edu](https://droughtmonitor.unl.edu)

## How did we get here?



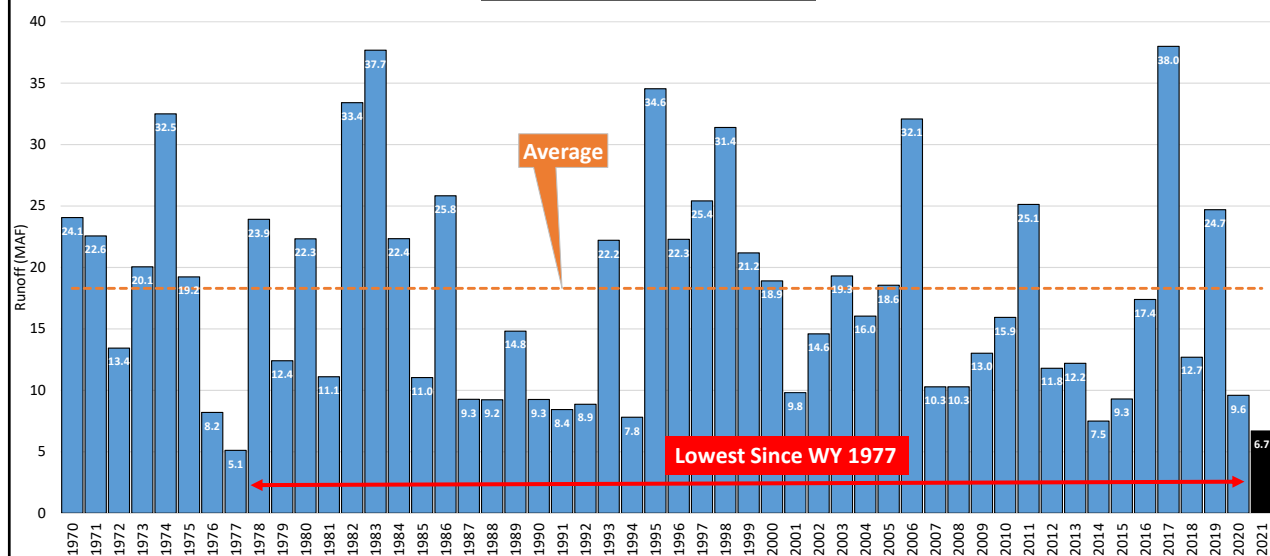
## Northern California Accumulated Precipitation WY 2021

### 8 Station Index Annual Rainfall



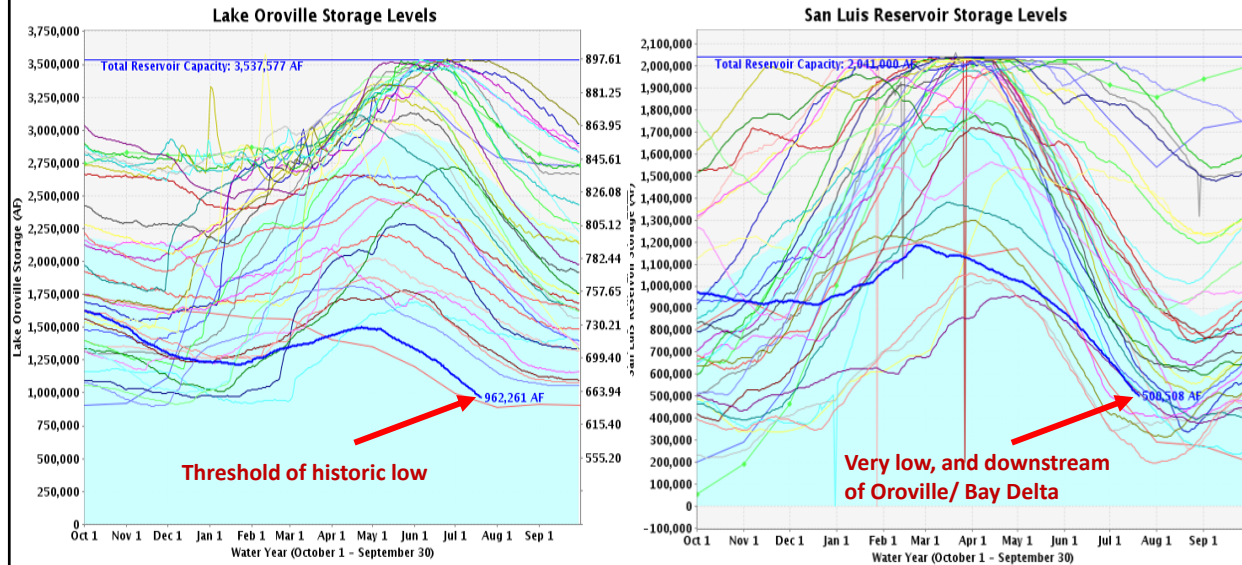
## Northern California Projected Runoff

### 4 River Index Historical Runoff

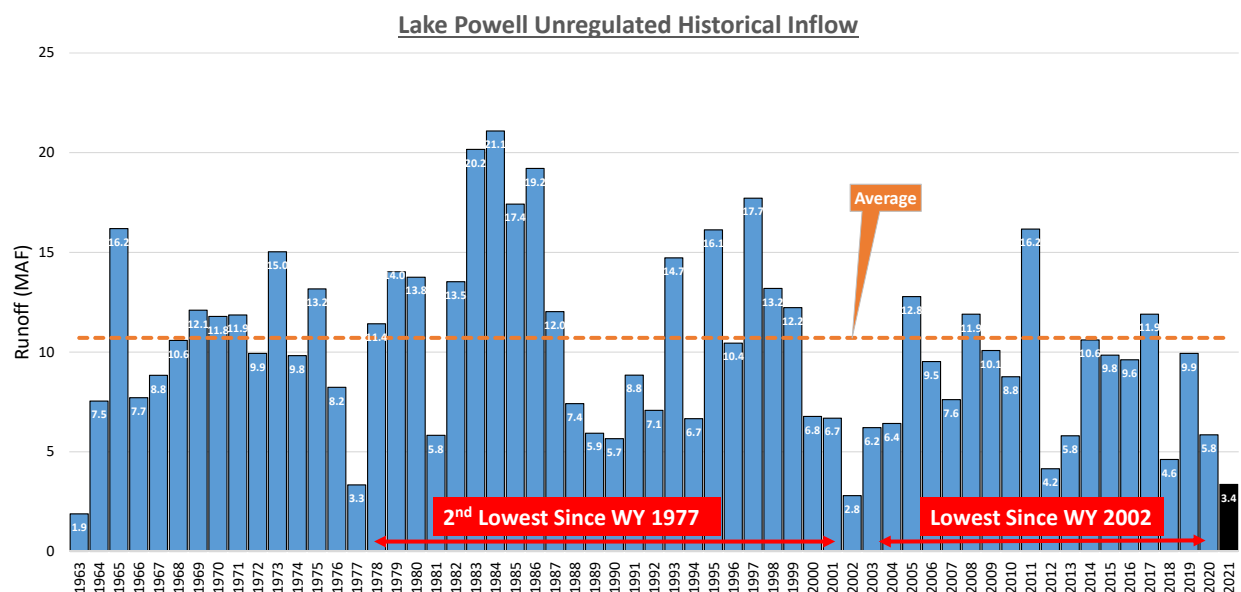


## Northern California Reservoirs

Delta Pumping as of 7.21.2021 = 2,200 AF per day,  
Equivalent to 830,000 AF per year (Capacity of DVL)



## Colorado River Basin Projected Runoff



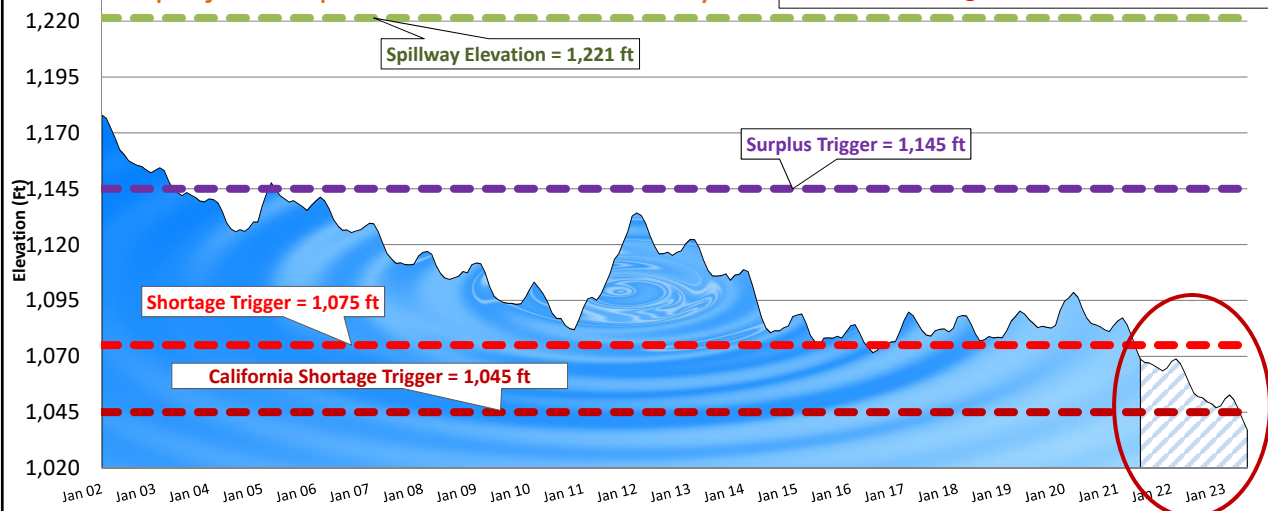
# Lake Mead

## Lake Mead Shortage/Surplus Outlook

	2021	2022	2023	2024	2025
Surplus	0%	0%	0%	1%	4%
Shortage	0%	97%	94%	82%	77%
Metropolitan DCP*			2%	36%	38%

**August 2021 USBR Study most likely first ever shortage declared for CY 2022**

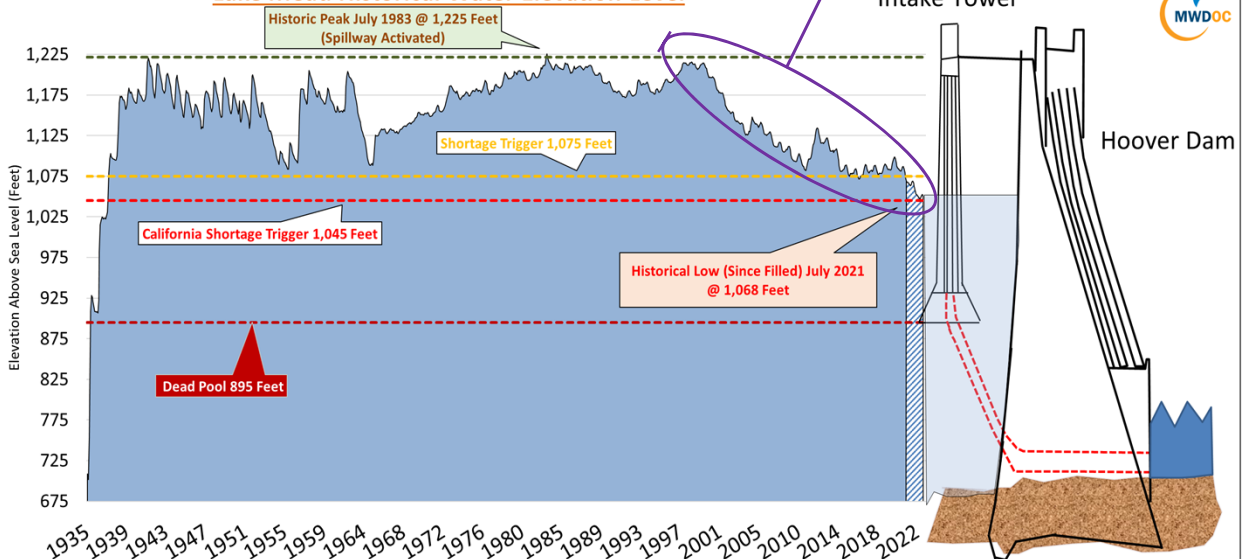
## Lake Mead Levels: Historical and Projected projection per USBR 24-Month Study

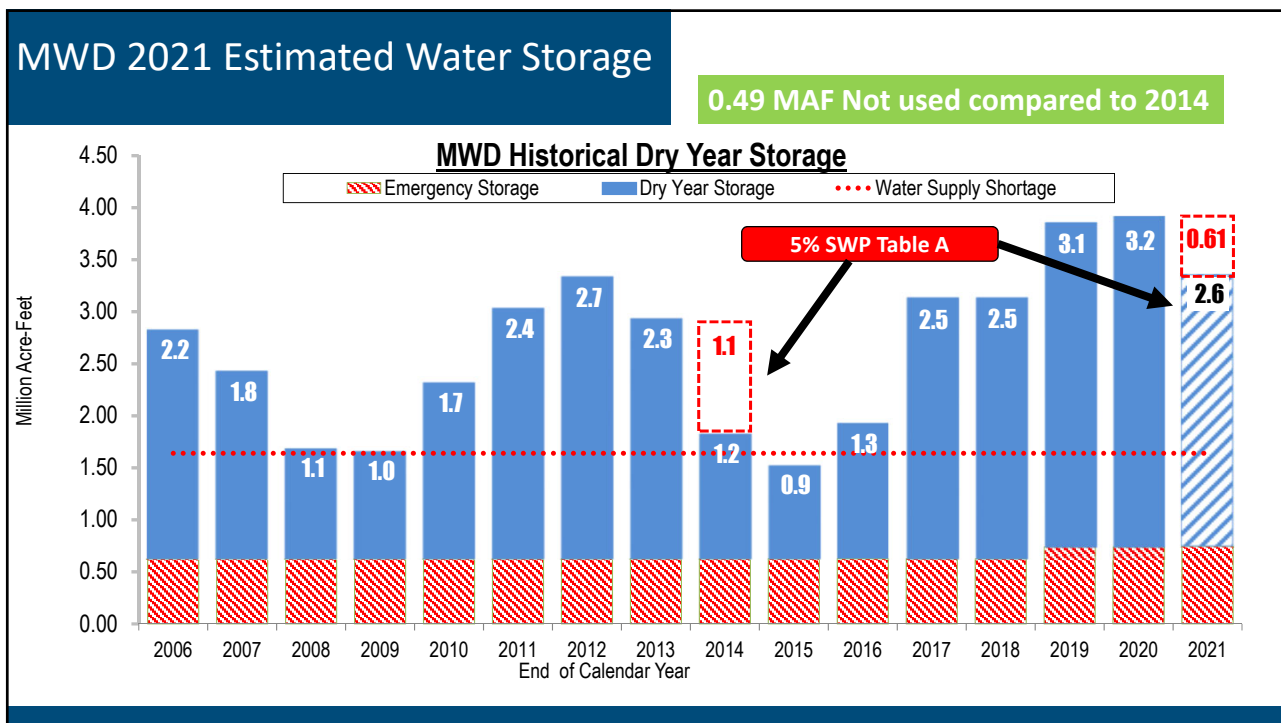


# Lake Mead (Since Filled)

Lake Mead has declined significantly since 1999

## Lake Mead Historical Water Elevation Level





## Governor's Drought Declaration



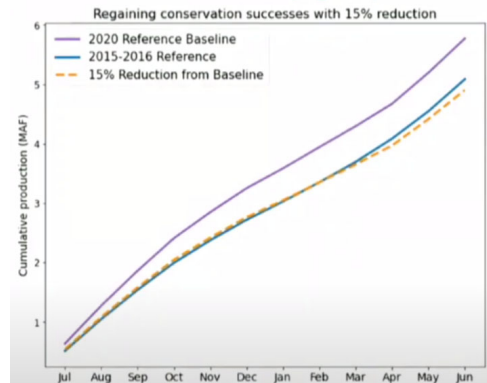
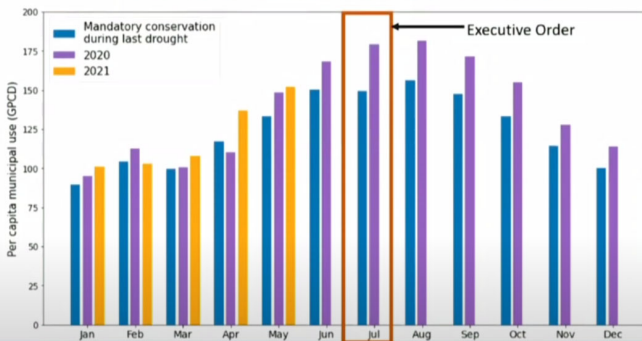
-On July 8<sup>th</sup>, Governor ask Californians to voluntarily reduce their water use by 15 percent with simple measures to protect water reserves if drought conditions continue and to help maintain critical flows for fish and wildlife wherever possible.

-State officials estimate an additional 15 percent voluntary reduction by urban water users from 2020 levels could save as much as 850,000 acre-feet of water over the next year for future use, or enough to supply more than 1.7 million households for a year.



We can do it (again)!

### Now is the time to conserve



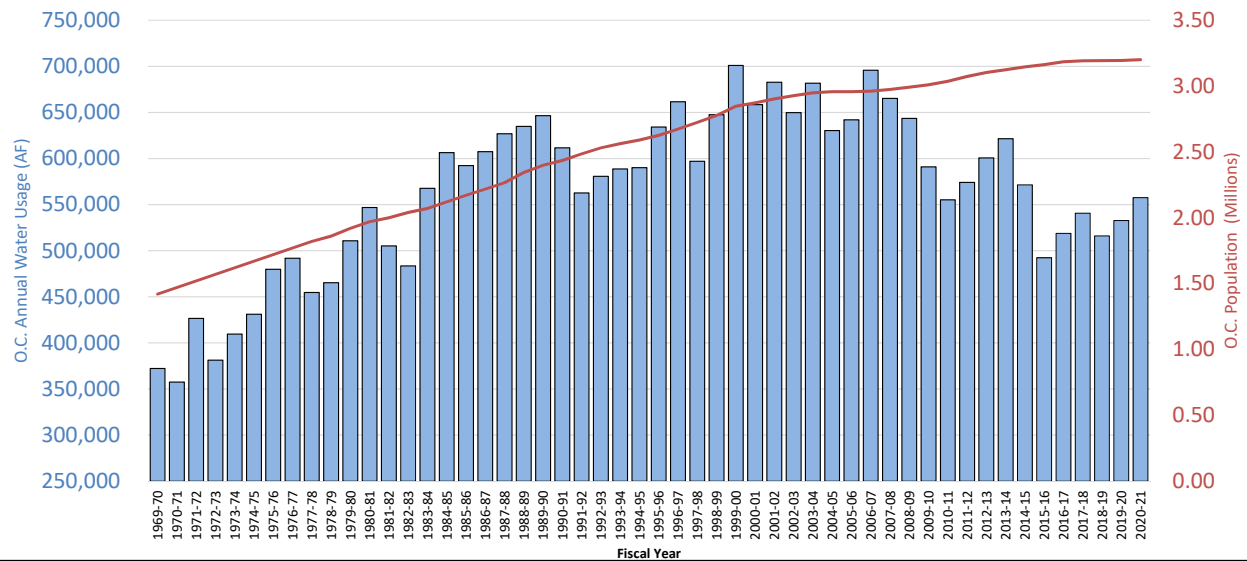
Questions???

\*Mammoth Lakes 3-19-2021

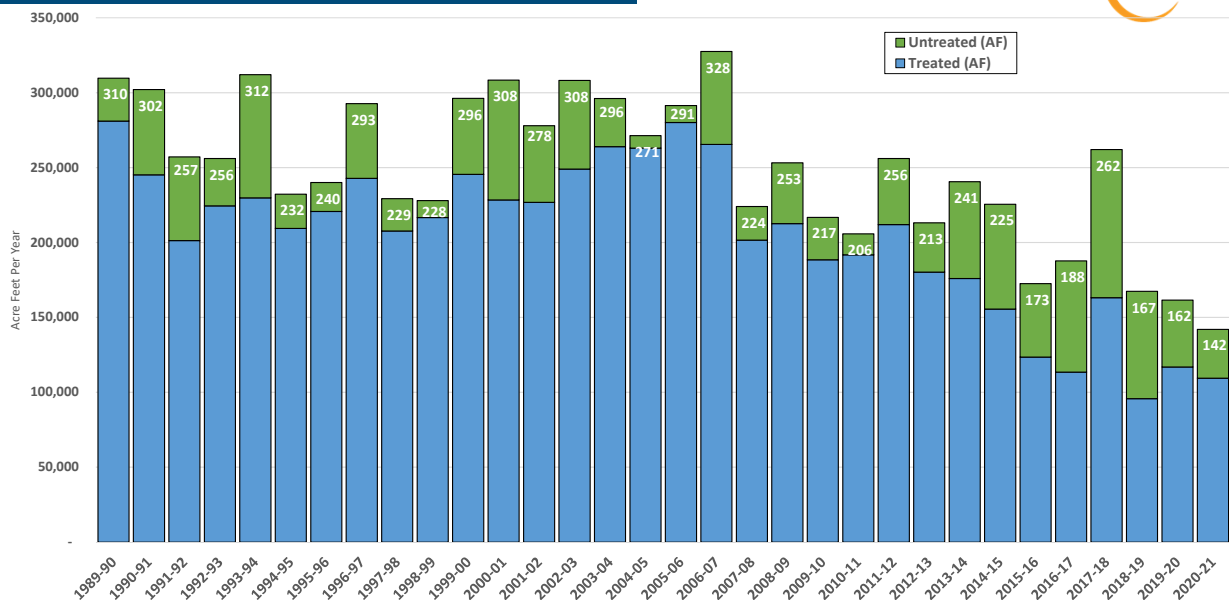
## Historical Annual Water Usage



**Orange County Annual M & I Water Usage**



## Historical Annual MWD OC Sales



## **ISSUE BRIEF #E**

**SUBJECT: Colorado River Issues**

### **RECENT ACTIVITY**

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#### **Testimony to Congress**

Metropolitan's Chief Operating Officer Deven Upadhyay provided written and oral testimony before the House Natural Resources Subcommittee on Water, Oceans, and Wildlife on June 29, regarding the Regional Recycled Water Project (RRWP) and expressed support for both H.R. 1015, the Water Recycling Investment and Improvement Act, as well as H.R. 4099, the Large-Scale Water Recycling Project Investment Act. The testimony described the RRWP's many potential benefits, including improving the reliability of the Colorado River system through partnerships with the Southern Nevada Water Authority, and potentially with partners in Arizona.

#### **Federal Appointments**

The White House announced the official nomination of Maria Camille Calimlim Touton to be the Commissioner of the U.S. Bureau of Reclamation (Reclamation). The U.S. Senate confirmed Tanya Trujillo to be the Assistant Secretary for Water and Power. Reclamation also announced that Carly Jerla will lead Reclamation's effort to develop new guidelines for operation and management of the Colorado River.

#### **Proposed California Guiding Principles**

In preparation for the next set of operating guidelines for the Colorado River system, the Colorado River Board (CRB) of California staff and representative agencies have developed eleven consensus-based high-level guiding principles. The proposed principles represent California's general goals and objectives. They are intended to be dynamic and adaptable as post-2026 operating guideline negotiations move forward.

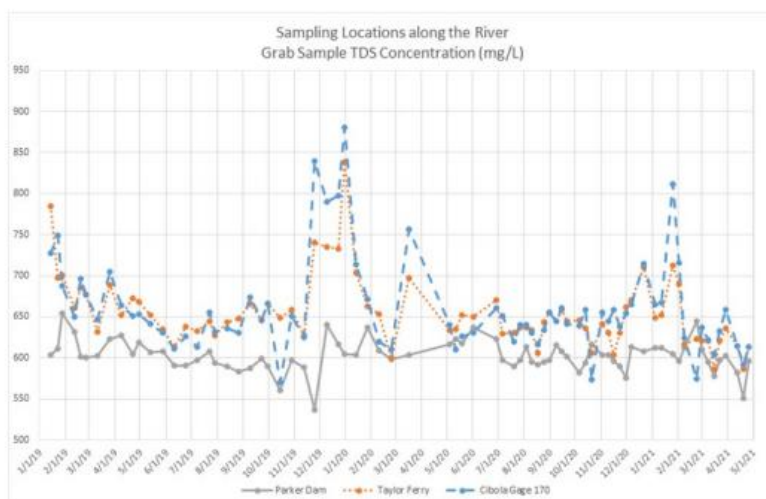
#### **Colorado River Basin Salinity Control Program**

##### ***Salinity Spikes in the Lower Colorado River***

CRB staff have been tracking the recurrence of spikes in the total dissolved solids (TDS) concentrations in the Lower Colorado River since 2019 when an increase in TDS concentrations was observed in the water supplies conveyed in the All-American and Coachella Branch Canals. Historically, occasional increases in TDS have been observed in these canals in the November to January timeframe. For example, this trend was observed in 2009, 2010, 2011, and 2013. To better understand the source of the TDS increases, CRB staff evaluated the TDS data associated with various water quality sampling locations along the Lower Colorado River from January 2019 through May 2021 and evaluated historical information as far back as 2010.

This map shows a subset of locations where water quality grab samples are conducted by Reclamation along the Colorado River at Parker Dam, Taylor Ferry and Cibola Gage. The Taylor Ferry Gage is located 12.4 mi south of Blythe. The Cibola Gage is located 27.4 mi south of Blythe.

As shown in the chart below, most recently TDS spikes were observed in December 2020 and January 2021 at the Taylor Ferry and Cibola locations, which are located downstream of Parker Dam. The salinity spikes are not present in the Parker Dam samples.



There may be several factors contributing to the spikes observed in this section of the Colorado River. During the winter months of November through January, water orders tend to be smaller with reduced flows being released out of Lake Mead. During the same months, either periodic winter precipitation or discharge of bank-storage may be flushing sediments from the local geologic outcrops into the Colorado River. Lower water flow and sediment-flushing into the river may be contributing to the TDS increases that have been observed during the winter periods. As an on-going monitoring effort, CRB staff will continue to evaluate available water quality data from Reclamation and will keep the Board and its member agencies informed of any observances of abnormal TDS increases associated with Lower Colorado River water quality.

A potential next step could be to engage with other Lower Basin agencies, Reclamation, and the USGS to review existing data and information, and potentially conduct additional data collection and evaluation along the Lower Colorado River below Parker Dam, and then develop remediation or mitigation options.

### **Colorado River Basin Salinity Control Program Implementation**

The Colorado River Basin Salinity Control Forum, Advisory Council, and Forum Work Group meeting were held on June 4, 7, 9, and 10, to further implementation of the Salinity Control Program. The Forum coordinates salinity control efforts among the states and federal agencies and works with Congress on program authorization and funding. Governors of each state appoint up to three representatives to the Forum, which is managed by an Executive Director. The Advisory Council advises the federal agencies in program administration. As a federal advisory committee, the Advisory Council provides implementation recommendations to the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture, and the Administrator of the EPA.

Over the four days of meetings, discussion topics included preparation of the 2023 Triennial Review of Water Quality Standards for Salinity for the Colorado River System, status of Paradox Valley Unit salinity control project, federal agency program updates, and recommendations to Reclamation and the U.S. Geological Survey on areas of future salinity control study and program funding. During the meeting, Metropolitan's Manager of Colorado River Resources, Bill Hasencamp was re-elected chair of the Forum for a second term and Ms. Rebecca Mitchell with the State of Colorado's Water Conservation Board was elected to serve as Vice Chairperson. A few items of special note from the meetings are highlighted below.

### ***Paradox Valley Unit***

The Dolores River is showing the negative impacts associated with the continued shutdown of the existing Paradox Valley Unit (PVU) brine injection well. High salinity brine has concentrated in the Dolores River under the current low flow conditions. In June 2021, the salt load in the Dolores River was approximately 200 tons per day with an extremely low flow of less than 10 cubic feet per second. Reclamation reported that it will likely not restart the existing brine injection well until after completion of a seismic risk and hazard assessment, which could continue through the end of 2023. Reclamation has selected a firm to evaluate potential effects of the extended shut down of the brine injection well and to provide recommendations to prevent further degradation if degradation has occurred.

Reclamation's Upper Colorado Basin Regional Director, Wayne Pullan, provided a summary of potential long-term options for the Salinity Control Program under consideration given the existing brine injection well shut down. Options under consideration include revisiting a landfill option for extracted brine, new public-private partnerships, expansion of the Basinwide program for off-farm salinity control projects in the Upper Basin, and consideration of new salt control projects for other point sources such as Pah Tempe Springs located in Utah.



*High salinity brine in the Dolores River under low flow conditions*

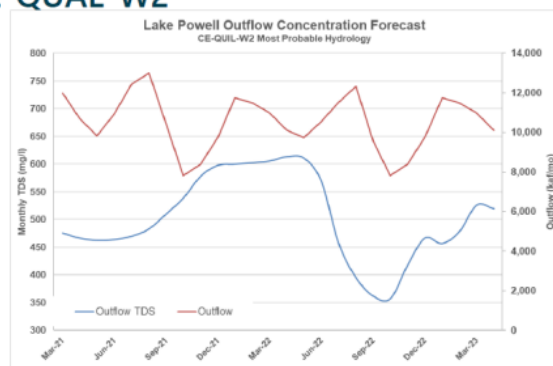
### ***Recommended Studies***

The Advisory Council approved funding for two new salinity studies under the Basinwide Studies, Investigations and Research Program. Both studies will fund the USGS to collect two years of quarterly water quality data during 2022 and 2023. The data will be used to determine a salt budget for the study areas, which could then be used to determine the viability of salinity projects in the future. The first study, with a cost of \$28,000, will support the USGS to conduct salinity sampling and analysis in the Lower Colorado River at a location below the Colorado River Indian Tribes (CRIT) lands in Arizona. The second study, with a cost of \$20,000, will support the USGS to conduct salinity sampling and analysis in the Upper Basin near Squaw Gulch, Colorado at the Cimmaron Canal.

### ***Salinity Conditions under Lower Reservoir Levels***

Reclamation provided a report on the current state of analytical tools to provide short-term forecasts of salinity conditions under low reservoir levels. It was reported that there is a time lag of approximately two years between when high salinity levels reach Lake Powell and when they are observed downstream at Lake Mead. Reclamation has a tool, CE-QUAL-W2, that is primarily used to estimate short-term changes in temperature and dissolved oxygen. Additionally, the tool does have the ability to consider total dissolved solids as well, once verified. Reclamation is working to update the model to support TDS evaluation.

## CE-QUAL-W2



- Salinity appears to be increasing in 2022
- Note: Forecast for 12/2021 on is median ESP trace (1981-2015)



### **Palo Verde Irrigation District System Conservation Agreement**

The Metropolitan Board authorized the General Manager to enter into an agreement with Reclamation, Central Arizona Water Conservation District, and Southern Nevada Water Authority to provide up to \$8.8 million to fund land following programs and to forebear up to 246,600 acre-feet of conserved Colorado River water generated by the program to add system water to Lake Mead. Metropolitan's funding share represents one-sixth of the total amount provided by the funding agencies. The water would be conserved through additional following that is not needed for Metropolitan's own use under the Palo Verde Irrigation District/Metropolitan Forbearance and Following Program and the Bard Seasonal Following Program. Metropolitan and other Colorado River water users would benefit from the improved storage in Lake Mead, reducing the risk of future water curtailments.

To implement the program, Metropolitan has made a voluntary following call for the upcoming contract year (Aug. 1, 2021 – July 31, 2022) of 75 percent of the maximum following level under the contract, and farmers may begin following at any time from August 1, 2021 through January 1, 2022. The farmers will begin notifying Metropolitan of their following amounts in July 2021. Land owned by Metropolitan will also participate in the program.

### **Attachment: Colorado River Board Draft California Guiding Principles**

**PROPOSED CALIFORNIA GUIDING PRINCIPLES  
ASSOCIATED WITH DEVELOPMENT OF THE NEXT SET OF  
COLORADO RIVER SYSTEM OPERATING GUIDELINES**

The process to develop post-2026 Colorado River System operating guidelines is in its early stages. To help guide California's participation in upcoming discussions and negotiations among the Basin's stakeholders, senior technical and program management staff of the agencies represented on the Colorado River Board have developed eleven consensus-based high-level guiding principles. These guiding principles are intended to describe California's general goals and objectives for the post-2026 guidelines. The principles are not intended to comprise California's overall negotiating strategy. These guiding principles are intended to be dynamic and may be adapted over the course of the next few years as the post-2026 guidelines are developed.

The draft guiding principles are being brought before the Colorado River Board to seek input and concurrence from members of the Colorado River Board, other California Colorado River water users, and the general public. Based upon input and information received, the updated guiding principles will serve as guidance to California's Colorado River Commissioner and other California principals involved in the discussions and negotiations associated with development of the post-2026 guidelines.

- i. Acknowledge California's senior priority 4.4 maf annual basic apportionment and protect California's right to utilize surplus water supplies when available.
- ii. Ensure the guidelines are fully consistent with the Law of the River.
- iii. Maintain and build upon the ongoing binational relationship with Mexico.
- iv. Recognize the Mexican Water Treaty of 1944 delivery obligation as a joint and shared responsibility of both basins.
- v. Address Basinwide water supply/demand imbalances and protect against reaching critically low reservoir elevations and uncontrolled flood releases through: (a) surplus and shortage management, (b) operations of the Colorado River reservoirs to benefit both basins, and (c) adaptive management measures that provide flexibility to react to future climate and water supply conditions.
- vi. Incentivize water conservation, storage, recovery, and sharing activities that benefit the Colorado River System and provide flexibility for water users.

- vii. Advocate for increased federal resources to improve basinwide water supply and quality, including fulfillment of federal obligations to conserve and/or augment Colorado River System water supplies.
- viii. Ensure that the guidelines not degrade the ecological value of the Salton Sea, nor negatively affect the air quality of that region.
- ix. Protect the Basin's natural resources, sensitive habitats, and imperiled species through compliance with environmental regulations and the continuation of environmental programs and commitments.
- x. Recognize the interests and priorities of water right holders, contractors, the Basin States, Tribes, and Republic of Mexico, while enabling the full and active participation of all interested stakeholders.
- xi. Recognize that the Colorado River Board will represent the shared interests of California stakeholders in interstate negotiations, working collaboratively with and in conjunction with the California's Colorado River water contractors.

## **ISSUE BRIEF #F**

**SUBJECT: Delta Conveyance Activities and State Water Project Issues**

### **RECENT ACTIVITY**

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#### **Delta Conveyance**

The California Department of Water Resources (DWR) is continuing to develop an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). DWR is planning four technical webinars to inform the public and interested stakeholders about the current progress related to the preparation of the Draft EIR. Each webinar will feature presentations from technical DWR staff about the approaches, methodologies, and assumptions to be used in conducting impact analyses in the Draft EIR. Information about impact findings and specific mitigation measures are not available at this time but will be included in future outreach efforts following the publication of the public Draft EIR.

DWR conducted a survey in November and December 2020 to collect information on how low-income, minority, and other underserved communities rely on resources in the Delta. This information will help assess potential impacts and benefits to these communities. The report documenting the survey results has been posted on DWR's website: [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP\\_EJSurvey-Report-5-28-2021\\_Final\\_508.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/DCP_EJSurvey-Report-5-28-2021_Final_508.pdf).

#### **Joint Powers Authorities**

During the June 17, Delta Conveyance Design and Construction Authority (DCA) Board of Directors Meeting, the board approved the \$21.5 million budget for fiscal year (FY) 2021/22. There is currently an underspend of approximately \$2 million for the current FY which is anticipated to roll over into the budget for next year following the closeout of the current FY in August 2021. If the DCA Board subsequently approves this added roll over amount, it would increase the overall budget for FY 2021/22 by about \$2 million. Planned technical work in the upcoming year will largely be focused on studies to support preparation of the Draft CEQA documents, continued execution of the geotechnical program, and consideration of a range of project refinements to be further evaluated during final design.

The DCA Board adopted the DCA Investment Policy for fiscal year 2021-22 and delegated to the DCA's Treasurer the authority to invest or to reinvest funds of the DCA, or to sell or exchange securities so purchased for FY 2021/22 in compliance with the Investment Policy and applicable law.

The DCA Board also adopted the resolution updating the Ethics and Protest Policies to: update the DCA's address, update of the non-discrimination language to include gender identity, revise the conflict of interest language to align with applicable law, and provide other formatting and language changes. They also took action to alter the DCA Board meetings to a schedule of every other month, starting in September after the regularly scheduled July 2021 meeting. Special meetings could be scheduled or regular meetings could be cancelled as needed with proper public notice.

John Weed, Vice-President of the Board of Directors of the Alameda County Water District, was introduced as a DCA Alternate Director for Class 2.

The DCA Stakeholder Engagement Committee (SEC) met on June 23 where an update on DCA design changes and an update on DWR's efforts regarding the Community Benefits Program were presented. DWR also presented the results of the recent Environmental Justice survey.

The Delta Conveyance Finance Authority regularly scheduled June meeting was cancelled.

### **Yolo Bypass Salmonid Habitat and Adult Passage (Fremont Weir Notch)**

Metropolitan staff continues to participate on the Fisheries and Engineering Technical Team for the Yolo Bypass Salmonid Habitat and Adult Passage (Fremont Weir Notch) project. The purpose of the project is to remove barriers to migration for salmonids and sturgeon between the Sacramento River and the Yolo Bypass. DWR proposes to install operable gates in the concrete Fremont Weir to provide access to 17,000 acres of floodplain rearing habitat for out-migrating juvenile salmon and allow passage and prevent stranding of adult salmonids and sturgeon at flows below crest height of the weir. DWR has obtained permits from the State Water Resources Control Board (Section 401 Water Quality Certification), and California Department of Fish and Wildlife (draft ITP and Section 1600 Streambed Alteration Agreement). Moving forward, DWR will continue efforts to obtain necessary permits for the project and complete final design. Project construction is scheduled to begin May 2022, and operations are expected to commence in 2023.

### **Sites Reservoir**

In the joint Sites Project Authority Board (Authority Board) and the Sites Reservoir Committee (Reservoir Committee) meeting on June 23, the Authority Board and Reservoir Committee accepted the updated Sites Reservoir Project cost estimate. The updated feasibility-level cost estimate is for the "right sized" project and is intended to provide potential participants with a higher degree of certainty for project affordability. The feasibility cost estimate for a 1.5 million acre-foot reservoir (Alternative 1) is estimated at approximately \$3.93 billion (2021 dollars), and the feasibility cost estimate for a 1.3 million acre-foot reservoir (Alternative 2) is estimated at approximately \$3.87 billion (2021 dollars).

The Authority Board and Reservoir Committee also directed their staff to prepare the Amendment 3 Work Plan on a 36 month work plan period, which includes a description of cash call options.

### **Science Activities**

Metropolitan staff is leading a Collaborative Science and Adaptive Management Program (CSAMP) effort to collaboratively develop a scientific definition of salmon recovery, expressed as a suite of clear, measurable objectives and landscape level quantitative targets. Metropolitan staff is planning and participating in a series of technical workshops to develop this definition. The first set of workshops, which are currently underway, are focused on the following tasks: (1) exploring different case studies and examples for structuring and defining salmon recovery, (2) working toward consensus on a draft framework and key elements needed for a definition of salmon recovery, (3) exploring and framing measurable draft

objective(s) for salmon recovery, and (4) discussing the approach(es) for defining quantitative landscape targets and thresholds. After the first workshop, the facilitators for this effort (Compass and Kearns and West) will review and organize the key elements, measurable draft objective(s) and approaches for defining quantitative landscape targets and thresholds into a draft framework to be presented to workshop participants in the late fall for review. This effort includes the participation of state and federal resource agencies, public water agencies, and non-governmental organizations.

On June 24, the Delta Stewardship Council approved the 2021 Delta Science Proposal Solicitation Awards for 16 proposals selected through a competitive process. One of the proposals selected for funding is the proposal submitted by Trout Unlimited titled Developing an Inclusive, Landscape Scale Process for Central Valley Salmonids. The funding awarded to this proposal will support phases 2 and 3 of the CSAMP Salmon Recovery Project (Project). Phase 1 of the Project is funded by the State Water Contractors Science Program.

**Summary Report for  
The Metropolitan Water District of Southern California  
Board Meeting  
July 13, 2021**

**CONSENT CALENDAR OTHER ITEMS – ACTION**

No Committee Assignments. **(Agenda Item 6G)**

**CONSENT CALENDAR ITEMS – ACTION**

The Board:

Authorized the General Auditor to enter into a one-year contract extension for external audit services with the firm of KPMG LLP for annual audits covering fiscal years ending June 30, 2021, through June 30, 2022; for an amount not to exceed \$465,500. **(Agenda Item 7-1)**

Agenda Item 7-2 WITHDRAWN

Authorized an agreement with Nokia of America Inc for a not-to-exceed amount of \$5,297,000 for furnishing wide-area network equipment and design support to upgrade the desert region-wide-area network; authorized increase of \$250,000 to the agreement with Hatfield & Dawson Consulting Engineers, LLC for a new not-to-exceed amount of \$730,000 for specialized technical support for the upgrade; amended current CIP to include upgrades to the communication system at Gene Pumping Plant; and authorized an agreement with HDR Engineering, Inc. for a not-to-exceed amount of \$275,000 for design services.  
**(Agenda Item 7-3)**

Adopted amendments to Metropolitan’s Administrative Code to move certain responsibilities for annexations from the Finance and Insurance Committee to Real Property and Asset Management Committee as shown in the Board letter. **(Agenda Item 7-4)**

Authorized the General Manager to grant a permanent highway and sight easement to Caltrans. **(Agenda Item 7-5)**

Authorized an increase of \$3 million to an agreement with Roesling Nakamura Terada Architects for a new not-to-exceed amount of \$5 million for preliminary design and architectural support services for the housing and property improvements at four CRA pumping plants. **(Agenda Item 7-6)**

Authorized the General Manager to enter into an agreement with IEUA, West Valley, and Valley District to provide West Valley assistance with water deliveries in the event of an emergency or planned outage, or the loss of local supply. **(Agenda Item 7-7)**

By a two-thirds vote, authorized the General Manager to make payments of up to \$3.56 million to the State Water Contractors for FY 2021/22. **(Agenda Item 7-8)**

Amend the Administrative Code by adding Section 2124 to provide Metropolitan-specific parliamentary procedures based on Rosenberg's Rules of Order, Revised 2011, as the meeting procedures for the Board and committees as stated in Attachment 1 of the Board letter. **(Agenda Item 7-9) (Deferred to August)**

Authorized the General Counsel to increase the amount payable under its agreement with Olson Remcho LLP by \$100,000 to a maximum amount payable of \$300,000.  
**(Agenda Item 7-10)**

Authorized the General Counsel to amount payable by amendment of the contract with Theodora Oringer PC for legal services by \$200,000 to an amount not to exceed \$900,000 (Approp. 154170). **(Agenda Item 7-11)**

Authorized filing cross-complaint in Baker Electric, Inc. V. Metropolitan Water District of Southern California, et al. (Los Angeles Superior Court Case No. 21STCV15612); and authorized an increase in the maximum amount payable under contract with Musick, Peeler & Garrett LLP, for legal services by \$200,000 to an amount not-to-exceed \$300,000.  
**(Agenda Item 7-12)**

#### **OTHER BOARD ITEMS – ACTION**

Waived attorney-client privilege and authorized the public release on July 20, 2021, of Shaw Law Group's report for presentation at the July 27, 2021 meeting of the Special Organization, Personnel and Technology Committee with staff recommended redactions. **(Agenda Item 8-1)**

#### **OTHER MATTERS AND REPORTS**

Discuss Department Head Evaluation Process Guidelines and Department Head Evaluation Presentations [Public employee's performance evaluations; General Counsel, General Auditor, and Ethics Officer. **(Agenda Item 10-1) (Deferred to August)**

#### **THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.**

Board letters related to the items in this summary are generally posted in the Board Letter Archive approximately one week after the board meeting. In order to view them and their attachments, please copy and paste the following into your browser:

<http://mwdh2o.com/WhoWeAre/Board/Board-Meeting/Pages/search.aspx>

All current month materials, before they are moved to the Board Letter Archive, are available on the public website here: <http://mwdh2o.com/WhoWeAre/archived-board-meetings>



**Adjourned Board Meeting**

**August 17, 2021**

**12:00 PM**

<b>Tuesday, August 17, 2021 Meeting Schedule</b>
09:00 a.m. - Adj. L&C
10:00 a.m. - Adj. RP&AM
11:30 a.m. - Break
12:00 p.m. - Adj. Board

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

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

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MWD Headquarters Building - 700 N. Alameda Street - Los Angeles, CA 90012

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**1. Call to Order**

1.1 Invocation: TBD

1.2 Pledge of Allegiance: TBD

**2. Roll Call**

**3. Determination of a Quorum**

**4. Opportunity for members of the public to address the Board on matters within the Board's jurisdiction. (As required by Gov. Code § 54954.3(a))**

**5. OTHER MATTERS AND REPORTS**

- |           |                                                              |               |
|-----------|--------------------------------------------------------------|---------------|
| <b>A.</b> | Report on Directors' events attended at Metropolitan expense | <b>21-349</b> |
| <b>B.</b> | Chairwoman's Monthly Activity Report                         | <b>21-350</b> |
| <b>C.</b> | General Manager's report of Metropolitan activities          | <b>21-239</b> |
| <b>D.</b> | General Counsel's summary of activities                      | <b>21-351</b> |
| <b>E.</b> | General Auditor's summary of activities                      | <b>21-352</b> |
| <b>F.</b> | Ethics Officer's summary of activities                       | <b>21-353</b> |

- G.** Report on list of certified assessed valuations for fiscal year 2021/22 and tabulation of assessed valuations, percentage participation, and vote entitlement of member agencies as of August 17, 2021. [Posting Separately] **21-326**

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

**6. CONSENT CALENDAR OTHER ITEMS - ACTION**

- A.** Approval of the Minutes of the Meeting for July 13, 2021 (Copies have been submitted to each Director) Any additions, corrections, or omissions **21-331**
- B.** Approve Committee Assignments

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

**7. CONSENT CALENDAR ITEMS - ACTION**

- 7-1** Adopt resolution establishing the tax rate for fiscal year 2021/22; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA. [Posting Separately] (FI) **21-321**
- 7-2** Approve proposed updates to the Rate Refinement Structure Principles recommended by the Member Agency Workgroup; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA **21-323**
- 7-3** Award a \$492,440 procurement contract to Royal Industrial Solutions for equipment to upgrade the ozone control system at the Henry J. Mills Water Treatment Plant and authorize an agreement with Suez Treatment Solutions, Inc. in an amount not to exceed \$430,000 for specialized technical assistance to support the upgrade; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EO) **21-330**
- 7-4** Authorize an agreement with CDM Smith, Inc., in an amount not-to-exceed \$2.75 million, for support of engineering and technical studies at the advanced water treatment demonstration facility; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (EO) **21-337**
- 7-5** Approve Metropolitan's annual membership in the U.S. Water Alliance and authorize payment of \$XX, and approve Metropolitan's annual membership in Water Education for Latino Leaders and authorize payment of \$25,000; the General Manager determined that the proposed action is exempt or otherwise not subject to CEQA (CL) **21-332**

- 7-6** Review and consider the City of Beverly Hills' approved Final Mitigated Negative Declarations and Addendum and take related CEQA actions, and authorize the General Manager to reinstate and amend the existing Groundwater Recovery Program Joint Participation Agreement (WPS) **21-336**
- 7-7** Authorize the General Manager to grant a ten-year concession agreement to Urban Park Concessionaires to operate and maintain the marina facility at Diamond Valley Lake in the City of Hemet; the General Manager has determined the proposed action is exempt or otherwise not subject to CEQA (RPAM) **21-334**
- 7-8** Authorize the General Manager to acquire up to 702 gross acres (up to 665 water toll acres) of property located in Riverside County in the Palo Verde Valley from Cox Family Farms, LLC and enter into a lease amendment with Coxco, LLC to add the newly acquired acreage to the existing lease; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA **21-335**  
 [Conference with real property negotiators; property identified as Riverside County Assessor's Parcel Nos. 821-140-002 (a portion of); 821-140-007; 830-110-001 (a portion of); 830-110-002; 830-120-009; 836-031-007; 836-031-008; 863-120-005; 863-170-003; 863-170-009; 863-180-001 (a portion of); 863-180-002; 879-130-010; 879-130-011; agency negotiators: Jennifer G. Ryan and Seyou Oh; negotiating parties: Cox Family Farms, LLC and Coxco, LLC; under negotiation: price and terms; to be heard in closed session pursuant to Gov. Code Section 54956.8] (RPAM)
- 7-9** Adopt amendment to the Administrative Code establishing Metropolitan-specific parliamentary procedures; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA (LC) **20-175**
- 7-10** Report on existing litigation OHL USA, Inc. v. The Metropolitan Water District of Southern California, Los Angeles Superior Court Case No. 19STCV27689; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA **21-333**  
 [Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)] (LC)

## **8. OTHER BOARD ITEMS - ACTION**

None

**9. BOARD INFORMATION ITEMS**

- |            |                                                                                                   |               |
|------------|---------------------------------------------------------------------------------------------------|---------------|
| <b>9-1</b> | Update on Conservation Program                                                                    | <b>21-354</b> |
| <b>9-2</b> | Report on Rate Refinement Workgroup's Review of Demand Management Cost Recovery Alternatives (FI) | <b>21-237</b> |

**10. OTHER MATTERS**

- |             |                                                                                                                                                                                                                                                                                  |               |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <b>10-1</b> | Discussion of Department Head Evaluation Process Guidelines and Department Head Evaluation Presentations<br>[Public employee's performance evaluations; General Counsel, General Auditor, and Ethics Officer, to be heard in closed session pursuant to Gov. Code Section 54957] | <b>21-370</b> |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|

**10. FOLLOW-UP ITEMS**

None

**11. FUTURE AGENDA ITEMS****12. ADJOURNMENT****NOTE:**

At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parenthesis at the end of the description of the agenda item e.g. (E&O, BF&I). Committee agendas may be obtained from the Executive Secretary.

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 Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.