

• Legal, Claims and Personnel CommitteeJune 7, 2004 Committee Meeting

7b**Subject**

Approve General Counsel's Business Plan for fiscal year 2004/05

Description

The General Counsel's 2004/05 business plan sets forth the anticipated focus of the Legal Department for the next fiscal year. In carrying out its mission of providing a full range of legal services in a professional, timely, cost-effective and creative manner, the Legal Department intends to concentrate on the following priorities during the 2004/05 fiscal year:

1. **State Water Project/CALFED** – Provide legal support in carrying out the Board of Directors' policy of maintaining long-term source protection and water quality improvements for the State Water Project, including protecting Metropolitan's interests in the State Water Contract.
2. **Colorado River** – Provide legal support for the Board's policy of ensuring a long-term reliable Colorado River Aqueduct supply.
3. **Operations** – Provide legal advice on statutory and regulatory requirements and compliance for operations programs.
4. **Capital Programs** – Provide legal support in the planning, environmental compliance, and construction of the board-approved Capital Investment Plan.
5. **Human Resources** – Provide legal support on various human resources issues to ensure a stable and productive workforce.
6. **Finance** – Provide legal assistance with rates and charges, the issuance of debt obligations, investment of surplus monies, and other financial activities undertaken by Metropolitan.
7. **Legislation** – Provide legal support regarding proposed state and federal legislation that may affect Metropolitan's interests.
8. **Governance** – Ensure compliance with statutory and institutional requirements, such as the Metropolitan Water District Act and Administrative Code, Brown Act, Political Reform Act, and Public Records Act.
9. **Legal Department Administration** – Continue to explore and implement ways in which to expand the effectiveness and efficiency of the Legal Department's operations and functions.

Attachment 1 provides a detailed description of the specific objectives on which the Legal Department plans to concentrate during the 2004/05 fiscal year.

Policy

Procedure for Department Head Evaluation and Compensation

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may

have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and approve General Counsel's Business Plan for fiscal year 2004/05.

Fiscal Impact: None

Option #2

Adopt the CEQA determination and redirect General Counsel's Business Plan for fiscal year 2004/05.

Fiscal Impact: None

Staff Recommendation

Option #1


Jeffrey Kightlinger
General Counsel

5/17/2004
Date

Attachment 1 – General Counsel's Business Plan for Fiscal Year 2004/05

BLA #2882

GENERAL COUNSEL'S BUSINESS PLAN FOR FISCAL YEAR 2004/05

Legal Department Mission - The Legal Department's mission is to provide a full range of legal services in a professional, timely, cost-effective and creative manner. The department provides legal advice to the Board of Directors on all matters affecting Metropolitan's legal interests, represents Metropolitan's interests in litigation, and provides legal advice and counsel to management and staff regarding specific projects and programs. The General Counsel's Business Plan for fiscal year 2003/04 sets forth specific goals and actions the Legal Department intends to pursue in protecting Metropolitan's legal interests and supporting board-adopted initiatives during the next year.

Goal No. 1

State Water Project/CALFED - A major goal of the Legal Department is to provide legal support in carrying out the Board of Directors' policies related to the State Water Project, including maintaining long-term source protection, water quality improvements, and protecting Metropolitan's interests in the State Water Contract. As a result, the department will focus on the following:

- Protect the successful trial court decision in the EIS/EIR litigation upholding the validity of the CALFED program. The decision is currently on appeal.
- Provide legal support in the Phase 8 settlement process with the aim of implementing the Sacramento Valley Water Management Program embodied in the final settlement agreement. This includes legal support and advice in developing programmatic and project-level environmental documentation, obtaining necessary permits, and drafting implementation agreements and supporting environmental documentation for the individual projects contemplated.
- Provide legal advice and document preparation regarding Metropolitan's dry year programs, including potential multi-year, multi-party water transfer option agreements.
- Assist in developing and implementing water quality exchange programs, including programs with the Kings River Water Association and the Friant Water Users Authority.
- Represent Metropolitan's interest in litigation affecting SWP water supply.
- Provide legal support and advice to CALFED agencies in implementing the South Delta Improvement Program, as well as other CALFED projects, including the Environmental Water Account and water quality exchanges.
- Provide legal advice on the State Water Project power issues, including representation of State Water Contractors' and Metropolitan's interests in matters directly affecting the Department of Water Resources at the Federal Energy Regulatory Commission and in other regulatory and judicial forums.
- Provide legal advice regarding the positions adopted during power cost allocation negotiations among the State Water Contractors.

Goal No. 2

Colorado River - In providing legal support for the Board's policy of ensuring a long-term reliable aqueduct supply, during the upcoming year the Legal Department will:

- Provide legal assistance in implementing the Quantification Settlement Agreement (QSA) agreements and proposals that modify existing allocations to Colorado River water.

- Represent Metropolitan's interests in the litigation challenging approval and implementation of the QSA agreements and related programs.
- Represent Metropolitan's and California's interests in both the remaining phase of the *Arizona v. California* litigation that seeks to adjudicate the Quechan Tribe's claim for additional Colorado River water, and in the Yuma Island Investigation being conducted by the Bureau of Reclamation to determine the possible entitlement of the Yuma Island area to Priority 2 water.
- Represent Metropolitan's interests in negotiating and drafting documents for the development and implementation of a multi-species conservation program that will provide compliance with the federal and California endangered species acts for the operation of federal water facilities on the lower Colorado River and for Metropolitan's diversion of Colorado River water. Provide support and advice on a separate long-term endangered species permit for operation of Metropolitan's Colorado River Aqueduct.
- Represent Metropolitan's interests in negotiating and developing agreements regarding potential off-aqueduct storage and water supply projects.
- Protect Metropolitan's existing energy contracts, and advocate and protect Metropolitan's interests on energy matters, including use of electric power generated by Colorado River hydroelectric facilities.
- Represent Metropolitan on the Consultative Work Group as it provides input to the California Department of Toxic Substances Control, the lead regulatory agency, in the remediation of groundwater contamination adjacent to PG&E's Topock Gas Compressor Station located near Needles, California.

Goal No. 3

Capital Projects - The Legal Department will provide legal support in the planning, environmental compliance and construction of the board-approved Capital Investment Plan by concentrating on the following priorities:

- Continue to assist in obtaining the right-of-way needed for the north reach of the San Diego Pipeline 6 project, including condemnation actions as necessary. Assist in negotiations with the Pechanga Indian Tribe regarding property desired for San Diego Pipeline 6. Assist in the review of alternatives, timing and delivery point for the south and tunnel reaches of San Diego Pipeline 6.
- Continue representation of Metropolitan's interests regarding Inland Feeder Project right-of-way and construction issues, including Campus Crusade for Christ and United States Forestry Service matters.
- Defend Metropolitan in *Shank/Balfour Beatty v. MWD* regarding Ameron's claims in this Inland Feeder construction case.
- Provide legal support to Metropolitan on issues related to development and construction of the Southern California Water Education Center.
- Provide legal assistance in preparation of environmental documents related to Diamond Valley Recreation area. Continue to provide legal support as planning and design of the DVL marina and recreation area continues.
- Assist with negotiations and drafting of documents related to leasing of office space at Metropolitan's Union Station facility.

Goal No. 4

Operations - In providing legal advice on statutory and regulatory requirements and compliance for operations programs, the Legal Department anticipates focusing on the following priorities in the coming year:

- Defend Metropolitan in the *Aerojet-General v. Metropolitan* litigation, in which Aerojet and other industrial defendants allege that importation of Colorado River water into the San Gabriel Valley groundwater basin contributed to the pollution of the basin.
- Provide legal assistance on land management issues, such as coordination with Riverside County on land use issues relating to the Riverside County Integrated Project and the recording project for Colorado River Aqueduct lands.
- Provide legal assistance in the marketing of power from Metropolitan's small conduit hydroelectric facilities.
- Provide legal assistance in development and implementation of local resource and seawater desalination agreements with member agencies.
- Provide legal support on water quality issues.
- Provide legal assistance to the Workplace Health and Safety section in responding to various regulatory issues arising at Metropolitan facilities.

Goal No. 5

Human Resources - To ensure a stable and productive workforce, the Legal Department will provide legal support on various human resources issues. Such areas include:

- Continue to defend Metropolitan's interests in *Cargill v. Metropolitan*, the class action litigation regarding temporary workers' entitlement to regular employment benefits.
- Continue to cross-train attorneys and expand the Legal Department's ability to provide legal advice to Human Resources and to represent Metropolitan in personnel litigation and administrative matters.
- Assist management with bargaining unit negotiations on successor MOUs and other meet and confer items.
- Assist management in updating and revising Metropolitan's guidelines and Administrative Code to reflect changes in policy.

Goal No. 6

Finance - The major goals identified by the Legal Department for 2004/05 in the finance area are to provide legal assistance with rates and charges, the issuance of debt obligations, investment of surplus monies, and other financial activities undertaken by Metropolitan. To accomplish these goals, the Legal Department plans to:

- Provide legal assistance with issuance of bonds and defeasance of outstanding bonds to provide debt service savings.
- Update disclosure provided to investors in Metropolitan's bonds.
- Provide legal assistance to the Chief Financial Officer in implementing strategies to manage Metropolitan's interest rate exposure.

Goal No. 7

Legislation - The Legal Department anticipates providing legal support regarding proposed state and federal legislation that may affect Metropolitan's interests in the following areas:

- Work with management to draft and seek federal legislation authorizing federal participation in the state CALFED governance structure, and other state and federal legislation needed to obtain the water quality and water supply reliability benefits of the CALFED program.
- Represent Metropolitan's legal interests in seeking enactment of legislation to remove the current prohibition on take of fully protected species and continue to work towards reasonable changes to endangered species laws.
- Represent Metropolitan in Sacramento and Washington on legislative issues of concern to Metropolitan in all areas, including but not limited to resources issues, public agency governance, employee relations, construction management, water quality, and power regulation.

Goal No. 8

Governance - In order to ensure compliance with statutory and institutional requirements, such as the Metropolitan Water District Act and Administrative Code, the Brown Act, the Political Reform Act, and the Public Records Act, the Legal Department anticipates the following actions:

- Provide legal support to the Board offices, CEO, Ethics Officer, and General Auditor on governance matters.
- Ensure ongoing compliance with public agency laws. Track changes in law and legal rulings to ensure ongoing compliance.
- Represent Metropolitan's interests in litigation challenging its interpretation and implementation of its governing statute and Administrative Code.
- Continue to represent Metropolitan in the appeal of *San Diego County Water Authority v. Metropolitan* regarding preferential rights.
- Continue to work with Ethics Officer in organization and implementation of Ethics Office programs.

Goal No. 9

Legal Department Administration - The Legal Department will continue to explore and implement ways in which to expand the effectiveness and efficiency of its operations in the following areas:

- Continue to analyze and implement ways in which in-house staff (attorneys and paralegals) can be used in lieu of external resources.
- Implement a new file management system for the Legal Department and keep abreast of technology trends pertaining to legal functions.
- Carry out the Legal Department's functions with a flat budget of \$10.8 million.
- Continue to address the Department's succession planning needs and future employment needs.