

• General Counsel's 2004/05 Business Plan - Third Quarter Update

Summary

The activities of the Legal Department that contributed toward the attainment of its established goals during the first nine months of the fiscal year are reported in Attachment 1.

Attachments

General Counsel's Business Plan for Fiscal Year 2004/05 – Third Quarter Update

Detailed Report

The attached report describes the Legal Department's progress toward attainment of its business plan goals during the first three quarters of the 2004/05 fiscal year.

<u>Goal</u>	<u>Attachment Page</u>
1. State Water Project/CALFED	1
2. Colorado River	3
3. Operations	5
4. Capital Programs	7
5. Human Resources	9
6. Finance	9
7. Legislation	10
8. Governance	10
9. Legal Department Administration	11

**GENERAL COUNSEL'S BUSINESS PLAN FOR FISCAL YEAR 2004/05
THIRD QUARTER UPDATE
JULY 1, 2004 – MARCH 31, 2005**

GOAL NO. 1 – STATE WATER PROJECT/CALFED

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.

Activities:

1. CALFED
 - a. CALFED Programmatic EIR/EIS Cases – In the consolidated state court cases now on appeal, prepared for argument in defending the trial court's decision that upheld the EIR.
 - b. California Farm Bureau v. California Resources Agency – Intervened in this challenge to the EIR for the Environmental Water Account in order to protect Metropolitan's interests in this program.
2. State Water Resources Control Board (SWRCB) Proceedings
 - a. Sacramento Valley Negotiations – Provided legal advice pertaining to implementation of the Sacramento Valley Settlement Agreement, focusing on preparation of an EIR/EIS for the resulting Sacramento Valley Water Management Program.
 - b. State Water Contractors, MWD, et al. v. SWRCB – Filed an opening brief in the State Water Contractors' (SWC) cross-appeal from the trial court's decision essentially upholding SWRCB's D-1641. The SWC have participated in this litigation to support D-1641 and filed their cross-appeal on the narrow issue of the trial court's decision holding that the SWRCB could not rely on the San Joaquin River Agreement/Vernalis Adaptive Management Plan as the mechanism to meet San Joaquin River flow requirements. As cross-appellants, the SWC also are developing responsive briefs in defense of D-1641 against appeals filed by parties opposed to that decision.
 - c. SWRCB Triennial Review – Participated with other SWC staff in the SWRCB's statutorily required review of its 1995 Bay-Delta Water Quality Control Plan. The Plan is the basis for flow, water quality objectives, and other operational requirements imposed on the SWP. Revisions to the flow requirements or objectives have the potential to impact the SWP. Legal staff participated in developing SWC comments and attended several days of SWRCB hearings in October and November 2004 and January and March 2005.
3. State Water Contract
 - a. Hyatt-Thermalito Cost Allocation Issues – In June 2004, Kern County Water Agency (KWCA) filed a claim with the State Board of Equalization (SBE) asserting that all revenues from energy generated by Hyatt-Thermalito must be credited to the Delta Water Charge. Similar claims were subsequently filed by a number of Northern California SWP contractors. The SBE rejected KWCA's claim in October 2004, but has not yet taken action on the other claims. Legal staff is continuing to work on a strategic plan and approach for defending against these claims and any lawsuits that may be filed by KWCA or other SWP contractors.

4. Oroville Reservoir

- a. Oroville Relicensing – Provided legal support at various settlement negotiation and drafting committee meetings in the ongoing FERC relicensing process for Oroville Reservoir. Legal staff continued to work on a strategic plan and approach for the ongoing settlement negotiations with DWR, federal and state regulatory agencies, and various non-governmental entities concerning appropriate protection, mitigation, and enhancement measures to be included as conditions of the license for the new term. DWR submitted an application for renewal to FERC in January 2005, and the existing FERC license expires in 2007.

5. Transfers

- a. 2005 Sacramento River Transfers – Worked with the SWC Joint Powers Authority and other SWC staff to develop water transfer option agreements for 2005. Legal staff participated in negotiating transfers; drafted a Specific Project Agreement under which the SWC Joint Powers Authority would facilitate and act as banker for the SWC buyers; and prepared a draft water transfer option agreement. The JPA Specific Project Agreement was signed by the interested SWC members. In addition, legal staff provided assistance in the negotiation and drafting of a transfer agreement with Glenn-Colusa Irrigation District. Metropolitan and three other SWC members executed contracts with three sellers for up to 127,000 acre-feet of water on an option basis; Metropolitan's share of the water is approximately 115,000 acre-feet.
- b. Yuba County Water Agency Transfer – Participated in negotiation of a "Tier 1" water transfer agreement between Yuba and the buyers (SWP, LADWP, and Environmental Water Account) and a "Tier 2" agreement among the buyers dividing the water purchased from Yuba. The agreements are based on principles previously negotiated. Under the 20-year agreement, Yuba will make available as much as 200,000 acre-feet of water to the buyers. Legal staff continued to participate in a multi-party drafting committee for the Tier 1 and Tier 2 agreements.
- c. Ward, et al. v. Richvale Irrigation District, et al. – Commenced preparation of a response to this litigation in which Metropolitan was named as a real party in interest. This action, filed in March, asserts, among other charges, that the Richvale Irrigation District, one of the sellers in the 2005 water transfer agreements, did not comply with CEQA.

6. Area of Origin Protections

- a. El Dorado Irrigation District v. SWRCB and El Dorado County Water Agency v. SWRCB – Participated in drafting the SWC's opening brief on appeal from the trial court opinion ordering SWRCB to delete Term 91 from the El Dorado districts' permits and remanding the matter to the SWRCB for further proceedings. The brief was filed in September 2004, and respondents filed their brief in January 2005.

7. Endangered Species Act (ESA)

- a. United States Fish and Wildlife Service (USFWS) Review of Delta Smelt Listing – Consulted with SWC staff and others to determine how to respond to USFWS' decision to continue to list the delta smelt as endangered after a status review. Metropolitan, as part of the SWC, joined in a 60-Day Notice of Intent to Sue the USFWS regarding its decision to continue listing the delta smelt as threatened.
- b. Environmental Protection Information v. National Marine Fisheries Service – Along with SWC staff, filed comments with National Marine Fisheries Service (NMFS) in its proceedings

considering whether the loss of spawning habitat available for the green sturgeon should affect NMFS' previous decision not to list the sturgeon.

- c. NMFS Proposed Critical Habitat Designation for Central Valley Spring-Run Salmon and Central Valley Steelhead – Continued to monitor NMFS' response to comments filed by the SWC and others regarding the designation of critical habitat for the listed Central Valley spring-run salmon and steelhead. NMFS had previously designated habitat for these species, but that designation was invalidated because NMFS failed to consider the economic impacts of the designation.
- d. USFWS Proposed Listing Determination for West Coast Salmonids – Participated in development of SWC comments filed in response to USFWS' reconsideration of the listing of the Central Valley winter-run and spring-run salmon and Central Valley Steelhead.
- e. Natural Resources Defense Council, et al. v. Norton, et al. – Provided legal support in this litigation filed in February by several environmental interest groups. The complaint asserts that the USFWS improperly issued a Biological Opinion and Incidental Take Statement to the U.S. Bureau of Reclamation regarding the Bureau's Long-Term Operations Criteria and Plan (OCAP). The OCAP establishes the Bureau's operational plan for the Central Valley Project. It also describes DWR's plan for operation of the SWP because the two projects closely coordinate their operations. Because this litigation could further restrict project operations, legal staff is considering whether to intervene in the litigation along with other SWC.

8. Energy

- a. Federal Energy Regulatory Commission (FERC) Proceedings – Made 28 filings at FERC on matters primarily affecting the SWP. Legal staff continued to attend meetings on various aspects of the ISO's market redesign and submit responsive comments to the ISO. Legal staff is working closely with DWR's special counsel to coordinate positions on filings, at settlement conferences, in regulatory hearings at FERC, and to provide review and recommendations on documents affecting the SWP.

9. State Water Project Supply and Improvements

- a. Napa Proposal and South Delta Improvement Programs - Continued to provide legal support in implementing: (1) the Napa Proposal; and (2) CALFED's South Delta Improvement Program, which should result in allowing DWR to increase pumping at its Banks pumping plant, among other actions.
- b. Sacramento Regional Wastewater Treatment Plan Expansion – In conjunction with the SWC and several urban agencies, entered into an agreement to toll the statute of limitations for challenging the EIR for expansion of this wastewater treatment plant and agreements for the development and funding of a feasibility study of measures to offset water quality impacts.

GOAL NO. 2 – COLORADO RIVER

Provide legal support for the Board's policy of ensuring a long-term reliable aqueduct supply.

Activities:

1. Litigation

- a. QSA Litigation – Filed submissions supporting coordination of the QSA cases in Sacramento. The lawsuits challenging the validity and the sufficiency of the environmental documents for the

QSA and various QSA-related agreements have been coordinated in Sacramento Superior Court. Metropolitan has been named a party in some of these lawsuits. The Legal Department filed its own demurrers and joined in other demurrers that sought to dismiss some of the lawsuits and/or some of the claims therein. Following hearings on November 5, 2004 and January 28, 2005, the trial court sustained portions of the demurrers and dismissed two of the cases. In response, one of the parties, the County of Imperial, is seeking review of the trial court's order by the Third District Court of Appeal. In March, Metropolitan filed an opposition to the County's petition for review. Preparation of the extensive administrative records for the various lawsuits is also proceeding.

- b. Arizona v. California – During Fall 2004, the Legal Department continued to participate in settlement negotiations under the auspices of a third-party mediator while simultaneously preparing for the Phase 1 trial, which is set to begin in April 2005. The Legal Department filed extensive objections to the proposed trial witnesses, exhibits, and evidence of the Quechan Tribe and the United States in early December 2004. After lengthy negotiations, counsel for the parties agreed on a draft settlement agreement which was approved by the governing boards or principals of the parties during December and January. The final settlement agreement to this long-standing case was executed by all of the parties on February 24, 2005.
- c. Spirit of the Sage Council v. Norton – In this environmental lawsuit challenging the “No Surprises Rule” as violating the federal ESA and the Administrative Procedures Act, the trial court in June ordered: 1) that the USFWS complete its action on a new Permit Revocation Rule by December 10, 2004; 2) that until USFWS adopts a new Permit Revocation Rule, all existing incidental take permits containing No Surprises assurances shall be subject to the general revocation standard applicable to other USFWS permits; and 3) that until the USFWS completes its actions on a new Permit Revocation Rule, it and NMFS are prohibited from approving new incidental take permits containing No Surprises assurances. In July 2004, legal staff, along with the other intervenors, appealed the trial court's ruling to the D.C. Circuit Court of Appeals. Also in July, legal staff provided legal assistance in the preparation of a letter commenting on the USFWS proposal to reestablish the Permit Revocation Rule and on its relationship with the No Surprises Rule. In August 2004, Metropolitan, along with the other intervenors, filed motions in the Court of Appeal requesting that it expedite the appeal and stay the trial court's rulings pending completion of the appeal. Those motions were denied, and appeal briefs were filed by the parties in November and December 2004. Oral argument on the appeal is scheduled for April 2005.
- d. Enron Power Marketing, Inc. v. MWD – Prepared a mediation brief and participated in a mediation in this matter which arises out of power purchase contracts to serve CRA pump-load that were negotiated with Enron at the height of California's energy crisis. Legal staff also prepared a motion to intervene in a proceeding at FERC that was recently expanded by the Commission to determine whether Enron should be required to disgorge profits as a result of its violation of its FERC-approved market-based tariff. In late September, FERC granted the motion, entitling Metropolitan to participate. Legal staff filed testimony in late January, stating that FERC should consider a remedy for Enron's claimed contract termination payments against parties such as Metropolitan and should order that Enron's recovery be limited to its costs. On March 11, FERC clarified that this proceeding will consider remedies for Enron's claimed termination payments. Legal staff also responded to discovery in this matter now scheduled for hearing in mid-June.
- e. California ISO/Power Exchange (PX) Refund Proceedings – In December, legal staff participated in the drafting of two appellate briefs submitted to the Ninth Circuit Court of Appeals. One brief asserted that FERC had no authority to order public entity utilities such as Metropolitan and the State Water Project to make refunds for sales of energy and ancillary services to the California

ISO and the California PX. The other brief argued that FERC improperly made certain sales of energy ordered by the U.S. Department of Energy subject to refund. Legal staff also participated in the preparation of reply briefs filed in early March. Oral argument is set for mid-April 2005.

2. Storage, Transfers, and Other Programs

- a. PG&E Topock Site – Continued to represent Metropolitan's interests as part of the Consultative Work Group formed to advise and assist the Department of Toxic Substances Control, Colorado River Basin Regional Water Quality Control Board, PG&E, and various other state and federal agencies in expediting cleanup of the site. Legal staff negotiated with PG&E and obtained Board approval for sale of Metropolitan property near the PG&E site to assist in expediting groundwater cleanup plan.
- b. Lower Colorado River Multi-Species Conservation Program – Acted as the hearing officer at three public hearings on the program in July following the issuance of the Draft EIR and the Draft Habitat Conservation Plan (HCP) for public review. Acting as the lead agency in accordance with CEQA, Metropolitan's board of directors certified that the Final Environmental Impact Report for the program was prepared in accordance with CEQA and approved participation in the program. Legal staff continued to negotiate the program documents, including a funding agreement with the Bureau of Reclamation and agencies within the states of Arizona, California, and Nevada, and an intrastate funding agreement for the California participants. Legal staff further assisted in negotiating with the California Department of Fish and Game on the terms and conditions for a California endangered species permit based on the Lower Colorado River Multi-Species Conservation Program.
- c. Palo Verde Irrigation District Fallowing and Forbearance Program – Drafted an interim fallowing agreement for the landowners that have offered to participate in the program to allow immediate fallowing pending completion of the long-term agreements. Legal staff continued to provide support in implementing the program, including legal assistance in resolving property and tax issues.

GOAL NO. 3 – OPERATIONS

Provide legal advice on statutory and regulatory requirements and compliance for operations programs.

Activities:

1. Litigation

- a. *San Gabriel Basin Water Quality Authority, et al. v. Aerojet-General et al.; Aerojet v. Metropolitan* – Continued to represent Metropolitan's interests in this third-party action seeking contribution from Metropolitan and other public agencies under CERCLA for contamination alleged to have resulted from the importation and spreading of Colorado River water. Legal staff filed motions seeking dismissal of the action, asserting that Metropolitan is not a responsible party under CERCLA and that other claims were not raised on a timely basis. The court recently appointed a special master for the case, and legal staff met with him and other parties involved in the matter.
- b. *Griffith Construction Company v. Metropolitan* – Filed an answer in September to this complaint in which contractor Griffith Construction Company is seeking payment for costs incurred in the repair of the Colorado River Aqueduct. Metropolitan was engaged with the contractor and subcontractors for more than a year and believes the contractor and its subcontractors have been

provided all compensation due. Mediation of this matter is tentatively scheduled for June 21, 2005, and the Legal Department will conduct a series of depositions prior to the mediation.

- c. Catskill Mountains Chapter of Trout Unlimited v. City of New York – Filed an amicus brief with the U.S. Court of Appeals for the Second Circuit along with other western water suppliers and the attorneys general of several states. The brief seeks to overturn a district court decision that the conveyance of water through a tunnel from an upstate reservoir to a downstate destination in connection with a statewide distribution system involved the “addition of a pollutant” (suspended solids and turbidity) and required a National Pollutant Discharge Elimination System (NPDES) permit under the federal Clean Water Act.
- d. Potter Valley Project – 60-Day Notice of Intent to Sue - Monitored activity related to a 60-day notice of intent to sue recently filed by fishing and environmental groups alleging violation of the Clean Water Act (CWA) by PG&E for diverting water from the Eel River and discharging it into the Russian River without first obtaining a NPDES permit. The 60-day notice is a prerequisite for filing of a citizen suit under the CWA. The anticipated lawsuit will raise the issue unresolved by the U.S. Supreme Court in *South Florida Water Management District v. Miccosukee Tribe of Indians, et al.* of whether the transportation of water from one body of water to another is regulated by the CWA.
- e. Western Watersheds Project v. Matejko – Participating with other potentially affected agencies, legal staff prepared an amici brief supporting the appeal from a Summary Judgment decision issued in 2004 by a federal district court in Idaho. The order found the U.S. Bureau of Land Management in violation of Section 7 of the ESA for not conducting a consultation with USFWS before considering changes to existing private irrigation ditch right-of-way across federal lands. The order could potentially affect agencies such as Metropolitan that have facilities located on federal lands.

2. Environmental Issues

- a. Water Quality Issues – Provided legal support to the Perchlorate Task Force formed to interface with member agencies. Legal staff also provided legal assistance on various legislative issues, including AB 2528, a Metropolitan-sponsored bill intended to eliminate confusion in certain reporting and notification terminology.

3. Energy

- a. Power Contracts – Provided legal assistance in negotiating an amendment to Metropolitan's power sales agreement with PG&E and reviewed related utility service agreements that Metropolitan must execute due to the expiration of certain existing contracts. Legal staff also prepared a claim for participation in the El Paso settlement refund based upon Metropolitan's power purchases for operation of the Colorado River Aqueduct during California's energy crisis and persuaded the SWP to do the same. Despite an initial denial of both claims by the El Paso Settlement Committee, the claims were ultimately approved. In late December, Metropolitan received its first disbursement of a refund that will total approximately \$15 million.
- b. Cal PX – Provided legal assistance in connection with defense against indemnity claim for activities by California Power Exchange prior to bankruptcy. Legal staff secured dismissal of two actions against a Metropolitan employee and secured indemnity from the insurance carrier, resulting in no expense for defense.

4. Real Property

- a. Union Station Facility – Continued to provide legal assistance in negotiating and drafting lease documents for lease space at Metropolitan's Union Station facility.
- b. Ormond Beach – Provided legal assistance to surplus property in accordance with California State Surplus Lands Act. California Coastal Conservancy responded with notice of interest to purchase for open space purposes. Legal staff negotiated sale, developed all necessary purchase and sale documents, and coordinated entering into escrow for sale of 276 acres. Legal staff negotiated retention of 20 acres for Metropolitan for a future desalination plant with an agreement with the purchaser to cooperate regarding the desalination plant. Legal staff also negotiated sale and developed all necessary purchase and sale documents for the City of Oxnard's purchase of Metropolitan's 50% interest in 13 acres.
- c. Arroyo Seco – Provided legal assistance to surplus property in accordance with California State Surplus Lands Act. The City of Pasadena responded with a notice of interest to purchase for open space and recreation purposes. Legal staff began conducting negotiations and developing all necessary purchase and sale documents.
- d. La Verne – Commenced negotiations and development of necessary purchase and sale documents following the notice of interest to purchase this surplus property for open space and recreation purposes by the City of La Verne.
- e. Lake Mathews – Defended against lawsuit alleging inverse condemnation due to noise. Favorable disposition is expected.
- f. RM Broadcasting – Defended against lawsuit asserting a prescriptive easement over MWD 1932 Act Lands. Legal staff filed a demurrer, and a hearing is expected in May 2005.
- g. Miscellaneous – Provided legal assistance on: Jensen sludge project agreements with LADWP; amendment to Lake Skinner recreation facilities lease with Riverside County; Diemer Tank Rehabilitation; and other issues related to Metropolitan properties.

5. Miscellaneous Issues

- a. Desalination – Provided legal assistance in preparing draft seawater desalination agreements that are currently being negotiated with member agencies.

GOAL NO. 4 – CAPITAL PROGRAMS

Provide legal support in the planning, environmental compliance and construction of the board-approved Capital Investment Plan.

Activities:

1. Inland Feeder Project

- a. Shank/Balfour Beatty v. Metropolitan – Legal staff analyzed the subcontractor claims and participated in extensive trial preparation in this matter in which Metropolitan and the contractor, Shank/Balfour Beatty, settled their dispute, but the dispute with the pipe manufacturer, Ameron, was not settled. The trial in this matter commenced on September 20, 2004, and concluded on December 22. The court ruled in Metropolitan's favor on March 22, 2005, finding that

Metropolitan's termination of the original Arrowhead East and West construction contracts was proper and that Ameron is entitled to compensation of only the \$1.9 million Metropolitan originally calculated and is not entitled to interest. Ameron immediately filed a motion for modification of the opinion, so additional legal work will be required.

- b. Arrowhead Tunnel Construction – Evaluated several potential claims arising from the December 25, 2003 mudslide in San Bernardino that caused significant damage to the Arrowhead West portal site. In September 2004, the Disputes Review Board rendered its decision in favor of Metropolitan relative to claims arising from the December 2003 flood. The contractor ceased work on the Arrowhead East Tunnel in November and December 2004, and returned to work in January. Legal staff remains heavily involved in evaluation of potential claims and in ongoing negotiations with the contractor to develop methods to improve construction progress.
 - c. Metropolitan v. Campus Crusade for Christ – Legal staff filed Metropolitan's opposition brief. Campus Crusade's reply brief is on hold pending an April 2005 settlement conference. Oral argument is anticipated to be scheduled thereafter in Campus Crusade's appeal of the trial court's ruling, which was generally in favor of Metropolitan.
2. Diamond Valley Lake
 - a. Center for Water Education – Continued to coordinate on Metropolitan's behalf with Center for Water Education in preparation for the beginning of construction of the Center complex. Legal staff assisted the Center with obtaining approval of its Storm Water Pollution Prevention Plan and met jointly with Center and City of Hemet staff to address grading and pad certification issues.
 - b. Post-Construction Mitigation Activities – Provided legal support on post-DVL construction issues, including Arcon Homes, Salt Creek, excess land, surplus housing, and West Dam groundwater management.
 3. San Diego Pipeline No. 6
 - a. Acquisition – Provided legal support in obtaining possession of all right of way needed for the north reach.
 - b. Board Workshop – Provided legal support in the preparation for and participated in a Board workshop concerning San Diego Pipeline No. 6 alternatives, timing, and delivery point.
 - c. Construction – Provided support in contract administration for the contract for the initial reach, which was awarded in December 2004.
 - d. Environmental Compliance – Provided legal advice relating to compliance with statutes that protect historic and cultural resources, endangered species, and water quality. Assisted in discussions with the U.S. Army Corps of Engineers and USFWS relating to permitting for construction work on the project.
 4. Jensen Filtration Plant Oxidation Retrofit Program
 - a. Construction – Drafted interim settlement agreement for use in negotiating a resolution of certain claims asserted by the construction contractor, Kiewit Pacific, and to establish additional completion dates for discrete activities for ozone facilities. At this time, it is unclear whether staff and the contractor will be able to reach agreement on outstanding issues.

GOAL NO. 5 – HUMAN RESOURCES

Provide legal support on various human resources issues.

Activities:

1. Labor Negotiations – Provided legal assistance regarding upcoming bargaining unit negotiations on successor MOU's and other meet and confer items.
2. Litigation
 - a. Cargill v. Metropolitan – Continued to engage in discussions with CalPERS and the plaintiffs regarding Metropolitan's compliance with the Supreme Court's decision in this class action litigation regarding temporary workers' entitlement to regular employment benefits and employment status. Legal staff met with CalPERS and the plaintiffs in October in an effort to reach a resolution concerning the CalPERS portion of the *Cargill* litigation. Metropolitan's initial analysis and evaluation of all potential plaintiffs' rights to CalPERS benefits was provided to CalPERS and plaintiffs' counsel. Their response is due in March. A mediation has been scheduled between plaintiffs and Metropolitan in May to address plaintiffs' remaining legal claim that certain temporary workers are entitled to regular employment status and benefits under Metropolitan's Administrative Code.
3. Support of Human Resources
 - a. Human Resource Issues - Provided daily legal advice to Human Resources and represented Metropolitan in personnel litigation and administrative matters. Successfully filed a summary judgment motion in one matter. Prepared for trial in two cases scheduled for trial in the next few months. Represented Metropolitan at a number of grievance hearings.
 - b. Policies – Provided legal support in updating Operating Policies and the Administrative Code to reflect changes in policy and to ensure uniformity in the application of policy.

GOAL NO. 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.

Activities:

1. Financing
 - a. Bonds – Provided legal support in extending the expiration dates of Standby Bond Purchase Agreements providing liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2002 Series A and B. Legal staff and outside bond counsel prepared and negotiated documents for \$68.3 million Waterworks General Obligation Refunding Bonds, 2004 Series A issued on October 14, 2004; \$300 million Water Revenue Bonds, 2003 Authorization, Series B-3 and B-4 issued on November 4, 2004; and \$136 million Water Revenue Refunding Bonds, 2004 Series C issued on November 16, 2004; and \$64.7 million Waterworks General Obligation Refunding Bonds, 2005 Series A, sold on March 16, 2005, to refinance outstanding bonds and obtain debt service savings and to provide funds for the capital investment program. Legal staff updated disclosure information on Metropolitan for the Official Statements describing these bond issues,

responded to questions on the disclosure information, and arranged for a presentation on directors' obligations regarding review of Official Statements from outside disclosure counsel.

- b. Disclosure Notices – Subscribed to Disclosure USA, an internet-based service for filing and dissemination of continuing disclosure notices for municipal bonds and used this service to provide notice of Metropolitan's general obligation and water revenue bonds defeased with refunding bonds issued in November. Legal staff also prepared annual statements of year-end financial information regarding both general obligation and water revenue bonds and transmitted them to Disclosure USA for filing.

GOAL NO. 7 - LEGISLATION

Provide legal support regarding proposed state and federal legislation that may affect Metropolitan's interests.

Activities:

1. Federal Legislation

- a. CALFED Legislation – Provided legal support, analysis, and drafting in support of legislation authorizing federal agency participation in and funding for implementation of the CALFED program. The President signed HR 2828, the House version of this legislation, into law.

2. State Legislation

- a. Energy – Provided legal assistance in drafting text that would enhance Metropolitan's ability to market energy produced by its small conduit hydroelectric facilities as renewable. The bill was vetoed by the Governor, but the negotiated text has reappeared in a successor bill introduced in the new legislative session.
- b. Water Rights Fees – Worked with a small ACWA committee in attempting to draft compromise language amending SB 31 (Florez) regarding the imposition of water rights fees on water users.
- c. Miscellaneous Legislation – Provided analysis and legal advice on a number of last-minute 2004 bills and on several bills introduced in 2005. Legal staff also participated in negotiations regarding: AB 382 (Oller) concerning off-reservation environmental impacts of Native American projects; SB 1334 (Kuehl) concerning oak woodlands conservation; and SB 1477 (Sher) and SB 1887 (Sher) concerning water quality and protection of wetlands. Legal staff also provided analysis and legal advice on other bills, including AB 2814 (Simitian) concerning CEQA and SB 18 (Burton) concerning Native American sacred sites. Legal staff successfully participated in consensus amendments to SB 1155 (Machado), dealing with Delta water quality requirements, so that Metropolitan could support the bill, which was enacted. Legal staff worked with the authors to revise SB 1374 (Machado), dealing with third-party impacts of water transfers and AB 2864 (Canciamilla), which would have amended SWRCB fees on water rights holders and restore funding for SWRCB Division of Water Rights; neither of the bills passed. Provided legal analysis on several bills involving ethics training for members of special district boards and expense reimbursement limitations.

GOAL NO. 8 - GOVERNANCE

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.

Activities:1. Litigation

- a. San Diego County Water Authority v. Metropolitan – On July 14, 2004, the California Supreme Court denied the San Diego County Water Authority's petition to review the lower courts' dismissal of the Authority's complaint, with prejudice, and awarded Metropolitan its costs. This matter involved the Authority's allegation that Metropolitan improperly calculates the member agencies' preferential rights under §135 of Metropolitan's Act.

2. General

- a. Public Records Act – Responded directly and provided legal support to staff in responding to numerous Public Records Act requests. Legal staff also reported to the Board on the impact of Proposition 59, which added rights of access to public documents to the California Constitution. The Legal Department helped obtain Board approval to propose that ACWA sponsor an amendment to the Public Records Act to exclude GIS data on the exact location of public water facilities from disclosure; however, ACWA declined to sponsor the amendment at this time.
- b. Political Reform Act – Legal staff aided the Ethics Officer in updating Metropolitan's Conflict of Interest Code and worked with outside counsel on reviewing and updating Metropolitan's Administrative Code regarding conflicts of interest and reporting. Legal staff also assisted the Ethics Officer in processing the annual Statements of Economic Interest.
- c. MWD Administrative Code – Prepared proposed amendments to the Administrative Code to reflect new Board committee structure and to update other sections of the code.
- d. Operating Policies – Provided legal review of all Metropolitan Operating Policies as part of the comprehensive effort to review and as needed, revise all such policies.

GOAL NO. 9 – LEGAL DEPARTMENT ADMINISTRATION

Continue to explore and implement ways in which to expand the effectiveness and efficiency of Legal Department operations.

Activities:1. Legal Department Operations

- a. Budget – Carried out the operations of the Legal Department for the first nine months of the fiscal year within the authorized budget.
- b. Technology – Implemented LiveNote transcript management system to allow real-time access to court transcripts and depositions, including the ability to search text online, and resulting in lower costs to obtain such transcripts.

- c. Management of Staff – Operated the Legal Department in an effective manner by: conducting regular staff meetings to keep all employees abreast of Metropolitan and Legal Department issues; conducting regular meetings with attorneys to provide direction regarding specific matters; addressing the department's succession planning needs by preparing for and redistributing assignments of the two attorneys retiring from July through October 2004; and performing employee evaluations in a timely manner.
 - d. Staff Training – Provided training for staff attorneys and paralegals on Metropolitan's contract administration procedures. The course, which was conducted by Contracting Unit Services Manager Michael Kolodisner, qualified for continuing legal education credit. Provided additional training for staff attorneys and paralegals on Legal Department contract administration procedures.
2. Legal Department External Functions
- a. Member Agency Legal Counsel Dinners – Conducted two programs, both qualifying for continuing legal education credit. In November, Professor Carole Goldberg of the UCLA School of Law spoke on "Gaining or Losing Ground? Private Development on Sites of Cultural Significance to Native Peoples." In February, former Solicitor of the U.S. Department of the Interior John Leshy spoke on "Some Thoughts on Water Rights, Takings, Groundwater and the Federal Role in Water Policy."