

- **General Counsel's Business Plan - Annual Report for Fiscal Year 2005/06**

Summary

The annual report on the General Counsel's 2005/06 business plan describes the Legal Department's activities during the past twelve months in accomplishing the goals and objectives established in the business plan that was approved by the board in May 2005.

Attachments

General Counsel's Business Plan for Fiscal Year 2005/06 – Annual Report

Detailed Report

The attached report provides detailed information regarding the Legal Department's activities during the 2005/06 fiscal year toward achieving the objectives set forth in the General Counsel's business plan for this fiscal year.

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**GENERAL COUNSEL'S BUSINESS PLAN FOR FISCAL YEAR 2005/06
ANNUAL REPORT
JULY 1, 2005 – JUNE 30, 2006**

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. State Water Contract

- a. Alameda County Flood Control and Water Conservation District, Zone 7, et al. v. California Department of Water Resources – Represented Metropolitan's interests in this case involving Hyatt-Thermalito cost allocation issues in which the Kern County Water Agency and eleven other state water contractors filed a complaint asserting that the Department of Water Resources (DWR) has failed to allocate costs and revenues associated with the Hyatt-Thermalito Power Complex in accordance with the terms and conditions of the State Water Contract. Metropolitan and twelve other state water contractors moved to intervene as defendants in order to ensure that their interests are adequately represented in this litigation. Legal staff worked closely with outside counsel in preparing this motion, which was granted by the Court on December 9, 2006. Legal staff is now providing legal assistance in developing our defense strategy; preparing for the commencement of discovery; and reviewing, analyzing, and indexing key documents.

2. Oroville Reservoir

- a. Oroville Relicensing – Continued to provide legal support at various settlement negotiation and drafting committee meetings in the ongoing relicensing process for the hydroelectric facilities at Oroville Dam. These efforts culminated in the submission of a proposed Settlement Agreement to the Federal Energy Regulatory Commission (FERC) on March 26, 2006, which contains the settling parties' recommended terms and conditions for the new license. Although the Settlement Agreement was signed by over fifty stakeholders and has widespread support, certain parties maintain that it does not fully address their concerns, and they have intervened in the FERC relicensing proceeding, seeking license terms and conditions in addition to or different from those recommended under the Settlement Agreement. Metropolitan and the State Water Contractors (SWC) submitted a joint reply to FERC on May 26, 2006, which responds to the various issues, concerns, and assertions raised in the interventions filed by other parties. Legal staff was heavily involved in drafting the 90-page reply brief and in coordinating the development and preparation of technical information and exhibits submitted.

3. CALFED

- a. CALFED Programmatic EIS/EIR Cases – Participated with the State in argument before the Third District Court of Appeal but were unsuccessful in preventing an adverse decision overturning the trial court's favorable decision. Legal staff assisted in petitioning the California Supreme Court for review of the court of appeal decision along with the State, the SWC, and Westlands Water District. In January 2006, the Court granted review. Legal staff prepared Metropolitan's opening brief and coordinated amici curiae support.

4. State Water Resources Control Board (SWRCB) Proceedings

- a. State Water Contractors, MWD, et al. v. SWRCB – Completed briefing in this appeal from the trial court's decision essentially upholding SWRCB's D-1641. A date for oral argument is pending. The SWC 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. The Court of Appeal issued its opinion, substantially affirming the trial court, but did reverse the trial court's ruling that water contractors are not "legal users of water." Legal staff opposed petitions to the California Supreme Court for review, which were denied.
- b. SWRCB Cease and Desist Proceeding Against DWR and U.S. Bureau of Reclamation (USBR) – Participated in public hearings together with other SWC staff in proceedings noticed by SWRCB in August 2005. The public hearings were to determine whether SWRCB should adopt a cease and desist order against DWR and USBR for a "threatened" violation of one of the salinity objectives in the Bay-Delta Water Quality Control Plan. The hearings have been completed. SWRCB issued the cease and desist order in February 2006, and SWC filed a petition for reconsideration with SWRCB, which is pending.
- c. SWRCB Triennial Review – Participated in hearings in August 2005 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 State Water Project (SWP). Revisions to the flow requirements or objectives have the potential to impact the SWP.

5. Transfers

- a. Water Exchange and Management Agreements with the Environmental Water Account (EWA) – Provided legal assistance in the August 2005 exchange agreement with DWR under which Metropolitan transferred a portion of its SWP water to EWA in 2005 in return for an equal amount of water in a future dry year. Provided legal support in discussions with DWR regarding another exchange agreement for 2006 and negotiated an agreement under which Metropolitan would agree to delay receipt of some of its scheduled SWP water until later in 2006 in return for payment for the EWA. Both 2006 EWA agreements were completed for execution. Legal staff also coordinated with the State in discussions that led to settling the EWA litigation in a manner that protects the EWA.
- b. Yuba County Water Agency Transfer – Monitored development of agreements to implement a proposed 20-year agreement with Yuba, under which Yuba will make available as much as 200,000 acre-feet of water to the buyers, (SWP, USBR, and EWA).

6. Area of Origin Protections

- a. El Dorado Irrigation District v. SWRCB and El Dorado County Water Agency v. SWRCB – Monitored this case in anticipation of oral argument. The matter is on appeal from the trial court's opinion ordering the SWRCB to delete Term 91 from the El Dorado districts' permits.

7. Endangered Species Act (ESA)

- a. Environmental Protection Information v. National Marine Fisheries Service – Along with SWC, filed comments with National Marine Fisheries Service (NMFS) regarding NMFS' proposal to list Sacramento Valley green sturgeon as endangered. NMFS subsequently listed the green sturgeon.

- b. Natural Resources Defense Council, et al. v. Norton, et al. – Provided legal support in this litigation that asserts that the U.S. Fish and Wildlife Service (USFWS) improperly issued a Biological Opinion and Incidental Take Statement to the USBR regarding USBR's Long-Term Operations Criteria and Plan (OCAP). The OCAP establishes USBR'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. The SWC requested the trial court to reconsider its June 2005 decision to deny SWC's motion to intervene, but the court refused to change its initial decision. Consequently, the SWC appealed the denial of intervention to the Ninth Circuit Court of Appeals, and the Court reversed the district court and allowed the SWC to intervene.
- c. Pacific Coast Federation of Fishermen's Associations, et al. v. Gutierrez, et al. – Monitored this case and reviewed how SWC could best participate in the litigation in support of NMFS. This action was filed in July 2005 seeking to overturn NMFS' Biological Opinion regarding USBR's OCAP. The SWC have successfully intervened in this action to support NMFS' biological opinion.

8. State Water Project Supply and Improvements

- a. Napa Proposal and South Delta Improvement Programs (SDIP) – Continued to provide legal support in implementing: (1) the Napa Proposal; and (2) CALFED's SDIP, which should result in allowing DWR to increase pumping at its Banks pumping plant, among other actions. Legal staff participated in several negotiation sessions intended to reach agreement on implementation of the SDIP and provided assistance in drafting agreement language. Legal staff assisted in preparing Metropolitan's comments on the Draft EIR.
- b. Sacramento Regional Wastewater Treatment Plan Expansion – Commenced litigation along with the SWC and other urban water agencies challenging the EIR for the wastewater plant's expansion following unsuccessful settlement discussions with the Sacramento Regional County Sanitation District. Legal staff are prosecuting the litigation as well as seeking relief through the regional water quality control board's permit renewal process.
- c. Bay-Delta Conservation Plan – Provided legal assistance in negotiation/preparation of principles for development of a multi-species conservation plan (MSCP) as a basis for federal and state authorization for incidental take under the state and federal Endangered Species Acts for SWP operations and for implementation of SDIP and the Napa Proposal. Provided legal support in developing legal and organizational framework for the MSCP.

9. Energy

- a. Federal Energy Regulatory Commission Proceedings – Made 24 filings at FERC on matters primarily affecting the SWP. Legal staff continued to attend meetings on various aspects of the California Independent System Operator's (CAISO) market redesign, met with CAISO staff to negotiate items of concern to SWP and Metropolitan, and attended several CAISO Tariff meetings. Legal staff worked closely with DWR's special counsel and staff to coordinate positions on filings concerning the CAISO market redesign and proposed energy rates, and at related settlement conferences at FERC.

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. Arizona v. California – After the parties agreed upon a settlement of the Quechan Tribe's water right claims, the Special Master issued a Report to the Supreme Court recommending approval of the settlement in 2005. In October 2005, the Clerk of the Supreme Court conveyed the Court's request that the parties draft a consolidated decree in *Arizona v. California* that included not only the current settlement with the Quechan Tribe but also all previous decrees in the case. Legal staff assisted in the preparation of a draft consolidated decree that was circulated to all who have been parties in *Arizona v. California*. On March 27, 2006, the United State Supreme Court approved the parties' settlement of the Quechan Tribe's water right claims and issued a Consolidated Decree that incorporates all of the previous decrees in the case along with the Quechan settlement. This decree brings to an end this litigation over Colorado River water rights that commenced in 1953; however, the court has retained jurisdiction to address any further claims for relief by the parties.
- b. Consejo de Desarrollo Economico de Mexicali v. United States – This lawsuit against federal officials was filed in federal court in Las Vegas by Mexican water users and environmental organizations. The complaint alleges that water to be conserved by the All-American Canal (AAC) Lining Project is owned by certain Mexican water users and that approval of the AAC Lining Project violates the National Environmental Policy Act, ESA, and other federal laws. Numerous water users in Arizona, Nevada, and California, including Metropolitan, IID, and SDCWA, have sought to intervene. The district court granted intervention to some parties but has not yet acted on the intervention requests of others. Metropolitan submitted extensive pleadings supporting the Federal Government's motions to dismiss some of the plaintiffs' claims and for summary judgment. Metropolitan also submitted pleadings opposing the plaintiffs' request for a preliminary injunction to halt the project. The district court heard oral argument on the summary judgment motions in April 2006 but has not yet ruled on the motions.
- c. POWER v. Imperial Irrigation District – Provided legal support in this action filed in April 2006 in which Protect Our Water and Environmental Rights (POWER) and two Imperial Valley landowners filed suit against IID in state court alleging that certain IID approvals in connection with the AAC Lining Project violated CEQA. Metropolitan, SDCWA, and USBR were named as Real Parties in Interest in POWER's mandate petition. Metropolitan and SDCWA filed motions to have the case transferred to a neutral county, and the Imperial County Superior Couert granted these motions on June 1, 2006. Further proceedings will be in abeyance while the transfer to San Francisco County Superior Court occurs.
- d. Fort Mojave Indian Tribe v. Department of Toxic Substances Control, Metropolitan Water District, et al. – Continued to represent Metropolitan in this action brought by the Fort Mojave Indian Tribe seeking to stop development and operation of a treatment plant currently being constructed by PG&E in the Topock Maze, an area considered sacred by the Tribe. The action alleges that the Department of Toxic Substances Control (DTSC) failed to adequately comply with CEQA before approving PG&E's proposed interim measure on an emergency basis and alleges Metropolitan failed to independently comply with CEQA prior to its sale of the property to PG&E. Proceedings are currently stayed as settlement discussions among the parties progress.

2. Shortage Criteria

- a. Colorado Compact Issues and Shortage Criteria – Represented Metropolitan in discussions among the Colorado River Basin States regarding the interpretation of the 1922 Compact and the obligations of the Upper Basin to deliver water to the Lower Basin and Mexico. These discussions are not yet resolved, but the Basin States are engaged in an ongoing effort with the USBR to make changes in river operations that will help delay, if not avoid, the imposition of shortages on the Lower Basin and a call for increased deliveries from the Upper Basin. Legal staff provided legal advice in developing a Lower Basin States proposal that includes augmenting water supplies through imports, extraordinary conservation, substitution of supplies, and operating efficiencies. In particular, the proposal incorporates Metropolitan's ideas allowing conserved water to be accumulated in Lake Mead for use in future years.
- b. Lake Mead Storage – Provided legal assistance in drafting an agreement with USBR to implement a demonstration program to create conserved water that is stored in Lake Mead. The agreement allows Metropolitan to store up to 50,000 acre-feet in 2006 and up to 175,000 acre-feet in 2007. Delivery of the stored water will be subject to future agreements in accordance with the policy guidelines adopted by USBR for the implementation of a long-term program.

3. Programs and Remediation Efforts

- a. Lower Colorado River Multi-Species Conservation Program – Drafted the funding agreement for California participants. The first payment for the program was made on October 1, 2005, and the program is being successfully implemented by the USBR. Benefits of the program were realized when USFWS excluded the Colorado River basin from its designation of critical habitat for the southwestern willow flycatcher based on the habitat creation and protection provided by the program. This exclusion avoided the need for USBR to re-initiate consultation over the effect of Colorado River operations on this species.
- b. Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program – Provided legal advice in drafting agreements and escrow instructions to enroll qualified lands in the program. Over 90,000 acre-feet of conserved water are provided in Metropolitan's 2006 Colorado River water order as a result of the program.
- c. PG&E Topock Site – Continued to represent Metropolitan on the Consultative Work Group monitoring DTSC oversight of remediation at the PG&E Topock Gas Compressor Station. Chromium VI, which was historically used as a corrosion inhibitor at the station and discharged to the land, has contaminated groundwater adjacent to the Colorado River. Metropolitan continued to urge DTSC to install measures to adequately protect the Colorado River from chromium contamination.

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 hearing of that motion has been delayed pending settlement attempts by the court. Discovery and further action is stayed until after June 2006.

- b. Western Watersheds Project v. Metejko – Continued to monitor and participate as amicus counsel in the appeal of a federal district court in Idaho's finding that the U.S. Bureau of Land Management was 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, an order that could potentially affect agencies such as Metropolitan that have facilities located on federal lands.
- c. Plaks v. Metropolitan – Provided legal assistance in this major inverse condemnation case. The defense of this case was successfully tendered to Calleguas Water District pursuant to an indemnity provision in the conjunctive use contract between Calleguas and Metropolitan; however, in-house counsel remain counsel of record along with associated counsel hired by Calleguas to represent Metropolitan. On May 26, 2006, Metropolitan's demurrer to the first amended complaint was granted as to all nineteen causes of action, with leave to amend. Legal staff continues to defend this action with outside counsel hired by Calleguas.
- d. S.D. Warren Company v. Maine Department of Environmental Protection – Filed an amicus brief with other members of the Western Urban Water Coalition in this case before the U.S. Supreme Court that considered what constitutes a "discharge" under the Clean Water Act (CWA). The Court upheld the Maine state court's determination that release of water from S.D. Warren's five hydroelectric dams constituted a discharge. The company sought to avoid having to obtain a state water quality certification under section 401 of the CWA. Metropolitan's amicus brief urged the Court to distinguish between CWA sections 401 (State Water Quality Certifications) and 402 (National Pollutant Discharge Elimination System Permits), concerned that a broad holding might impact Metropolitan's ability to rely on water from different sources. The Court's opinion carefully differentiated between the two sections and limited its holding to section 401 permitting requirements.
- e. Rampanos v. U.S. and Carabell et al. v. U.S. Army Corps of Engineers – Joined the Association of California Water Agencies, National Water Resources Association, the SWC, SDCWA, and other western water entities in these consolidated cases before the U.S. Supreme Court. These cases concern the proper extent of federal jurisdiction under section 404 of the CWA to regulate wetlands. Metropolitan's brief urges the Court to find that the CWA does not authorize federal jurisdiction over non-navigable waters that do not significantly affect interstate commerce in navigable waters. Oral argument was held February 21, 2006, and a decision is expected before the end of the Court's term.
- f. Enron Litigation – Prepared for settlement negotiations meetings concerning Enron's breach of contract action against Metropolitan and FERC's enforcement action against Enron. The settlement negotiations facilitated by FERC culminated in a comprehensive settlement providing for Metropolitan's payment of approximately 24% of Enron's original termination payment demand, excluding accrued interest. The settlement agreement awaits formal approval by FERC and the U.S. Bankruptcy Court administering Enron's bankruptcy petition, which approval is anticipated by the end of summer.

2. Real Property

- a. Union Station Facility – Completed negotiation with the State of California and leasing of approximately 50,000 square feet of office space at Metropolitan's Union Station facility.
- b. Arroyo Seco – Assisted in completing the sale of Metropolitan-owned property in the Arroyo Seco area to the City of Pasadena by preparing a permanent easement for open space and other necessary purchase and sale documents.
- c. Lake Mathews Mineral Properties, Ltd – Provided legal assistance regarding scope of access rights and potential impacts from holder of mineral rights beneath Lake Mathews, including negotiations with mineral rights holder, local resource and permitting agencies, and the press.
- d. Diemer Rear Access Road – Provided legal assistance on negotiations with California Department of Parks and Recreation and federal and local resource agencies for a memorandum of understanding regarding proposed construction of a secondary access road to the Diemer Plan from Carbon Canyon Road and running through Chino Hills State Park.
- e. Chemical Unloading Facility (CUF) Buffer Property Purchase – Provided legal assistance with purchase and closing of buffer property adjacent to Metropolitan's CUF.
- f. Ormond Beach – Provided legal support for negotiation of a Coastal Commission easement and permit necessary to protect Metropolitan's rights to utilize its retained property for a desalination plant.
- g. Washington, DC Office – Provided legal assistance in the completion of the lease and negotiation of the build-out of new office space in Washington, DC.
- h. Real Property Development and Management – Provided legal assistance for the Property Review Council, reviewed and revised property transfer documents, and provided legal research and advice on matters affecting Metropolitan's real property assets.

3. Diamond Valley Lake (DVL)

- a. Center for Water Education – Continued to coordinate with Center for Water Education on Metropolitan's behalf as construction of the Center's complex progressed. Legal staff responded to several Board inquiries related to the Center's organization and operation. Legal staff provided legal support regarding Project Labor Agreement issues relating to the museums.
- b. Ankerstar v. Nunez – Provided legal assistance in the settlement of this quiet title action regarding a residential property near DVL that Metropolitan surplused. An unsuccessful bidder sued Metropolitan and its real estate agent. Metropolitan secured a dismissal of the action and reimbursement of its legal fees and costs via an indemnity agreement with the real estate agent.

4. West Valley Feeder No. 1 Pipeline

- a. Repair – Provided legal support for the temporary and permanent repair of the pipeline.
- b. Claims – Provided legal representation and defense of claims by homeowners and developer geotechnical consultants arising from homeowner claims of subsidence. Legal staff provided legal support regarding cost sharing with the Los Angeles Department of Water and Power (LADWP).

5. Miscellaneous Issues

- a. Groundwater Storage Agreements – Provided legal assistance in the negotiation and drafting of principles for a 2005 Supplemental Storage Program and specific program agreements with the Municipal Water District of Orange County and the LADWP.
- b. Recording Project for the Colorado River Aqueduct – Provided legal assistance in completing the recording project for the Colorado River Aqueduct by drafting the document that is used to record the official federal records conveying the Aqueduct right-of-way to Metropolitan. Legal staff assisted in negotiations with the San Bernardino county counsel to resolve objections of the county recorder to recording the documents in that county. The final recording is expected to be completed by the end of this fiscal year.
- c. Orange County Reservoir – Provided legal support for the drafting of a multi-party agreement providing for the covering of the reservoir and capacity rights therein.
- d. Regional Board Waste Discharge Requirements – Provided legal assistance in opposing Santa Ana Regional Board proposal to impose waste discharge requirements on the discharge of Metropolitan water for groundwater recharge and storage.
- e. Urban Water Management Plan – Provided legal assistance in finalizing Metropolitan's 2005 Urban Water Management Plan.
- f. Agreements – Prepared groundwater storage, recovery, and recharge agreements; conservation, local resource, and desalination agreements, including seawater desalination program agreements; and agreements for Community Partnering and World Water Forum grants. Legal staff provided legal support in development of agreements with Western Municipal Water District and Eastern Municipal Water District regarding construction of the Perris Valley Pipeline.
- g. Certification Trademarks – Provided legal assistance in processing of applications for certification trademarks for the California Friendly program and the Solar Cup.

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 – Provided legal support in preparation of record of appeal and preparation for appeal.
- b. L.H. Woods v. County of San Bernardino – Provided legal assistance in negotiations that resulted in a dismissal of this lawsuit involving the County's claim against Metropolitan for indemnity based on the permit issued for construction of the Inland Feeder.
- c. P&D Consultants Inc. v. Metropolitan – Represented Metropolitan's interests in this action alleging breach of contract for mitigation monitoring services provided on the Inland Feeder project.

- d. Inland Feeder Pipeline – Provided legal support for continuing right-of-way needs, as well as lengthy appeal process by Campus Crusade for Christ, including petition to and briefing in California Supreme Court. Provided legal support in the implementation of contracts for the construction of the Arrowhead Tunnels. Provided legal support for negotiation of potential settlement of pending issues relating to the Arrowhead Tunnels.
 - e. Caltrans Condemnation – Negotiated and settled condemnation action by Caltrans regarding a portion of Metropolitan's Inland Feeder pipeline right-of-way near Mentone Boulevard in Riverside County by getting Caltrans to accept a permanent easement rather than condemning Metropolitan's right-of-way.
2. San Diego Pipeline #6
 - a. Acquisition and Construction - Provided legal support and advice regarding: right-of-way needs; negotiations and analysis of potential water supply and annexation issues with the Pechanga Indian Tribe; review of south reach, portal, tunnel, and alignment options; and time and delivery point issues for the remaining reaches.
 3. DVL Recreation
 - a. Development Process – Provided legal support for RFP to identify development teams capable of constructing and operating the recreational facilities. Legal staff concluded an agreement with the successful development team for negotiation of the recreation facilities at the east end of DVL in conjunction with private development of Metropolitan surplus lands adjacent to the recreation area. Legal staff continue to provide legal assistance in the ongoing negotiations.
 - b. Granados v. Metropolitan, et al. – Defended Metropolitan against administrative claim and legal action by Robert Granados, dba Las Americas Team, who unsuccessfully submitted a proposal regarding the development of the East Recreation Area and the North Property Area for DVL. Legal staff obtained dismissal of the complaint with prejudice.
 4. Filtration Plant Construction Projects
 - a. Skinner Filtration Plant – Provided legal assistance in mitigating Metropolitan's exposure to potential construction contractor claims on the following outstanding projects: Skinner Oxidation Retrofit and Washwater Reclamation Plant No. 3, Skinner Expansion No. 4, and Skinner Chemical Systems Modifications.
 - b. Diemer Filtration Plant – Provided legal assistance regarding design errors and omissions in the Solids Handling Facility and Vehicle Maintenance Center project and the Plan Maintenance Facility project.
 5. Other Capital Programs
 - a. Diemer Treatment Plant Improvement Program – Provided legal assistance and review of environmental documents.
 - b. Central Pool Augmentation – Provided legal support and analysis of right-of-way issues, geotechnical exploration contracts, joint water and transportation tunnel studies and funding, and pipeline alternatives. Assisted with drafting a joint powers agreement for cooperative funding and use of geotechnical surveys. Legal staff negotiated an offer of dedication from the City of Irvine for an alternate portal site.

GOAL NO. 5 – HUMAN RESOURCES

Provide legal support on various human resources issues.

Activities:1. Bargaining Units

- a. Labor Negotiations – Provided legal assistance in successfully negotiating multi-year MOU's for the rank-and-file, supervisory, and management and professional bargaining units.

2. Litigation

- a. Cargill v. Metropolitan – Entered into a settlement agreement pursuant to Board authorization resolving the Administrative Code portion of the Cargill temporary labor class action lawsuit (i.e., the non-pension benefits claims). The settlement also resolves a number of related grievances filed by AFSCME Local 1902. The agreement creates a Settlement Fund of \$35 million, and as required by law, is subject to approval by the Los Angeles Superior Court. The remaining major portion of the case concerns implementing the Supreme Court's ruling establishing common law eligibility for CalPERS benefits. That effort involves enrolling eligible temporary workers, addressing the potential penalties associated with late CalPERS enrollment, resolving eligibility disputes, and reviewing petitioner's anticipated attorney fees request. Metropolitan submitted 344 individuals as eligible for enrollment, and this number may increase once CalPERS clarifies the eligibility standard. CalPERS issued an initial administrative decision applying a late enrollment penalty to Metropolitan. The General Counsel appealed that determination and continues to maintain that CalPERS should not apply any penalty provision towards Metropolitan. An administrative hearing on the penalty issues has yet to be scheduled but should occur sometime during the fall. The parties have addressed class member eligibility disputes by submitting pilot cases covering different categories of temporary work services. These pilot cases have been fully briefed, and the parties are now waiting for CalPERS to issue initial administrative determinations.
- b. Villanueva v. Metropolitan – Defended Metropolitan in this lengthy employment discrimination bench trial. At the close of the plaintiff's case, Metropolitan's motion for judgment, made on behalf of an individually named employee defendant, was granted. Under the Fair Employment and Housing Act, a prevailing defendant is entitled to costs and attorneys' fees if it can show the plaintiff's case is without foundation, unreasonable, or frivolous. On June 6, 2006, the trial court awarded the individually named employee defendant approximately \$117,000 in attorneys' fees and costs. Immediately following this ruling, settlement negotiations commenced at the plaintiff's request and resulted in a settlement of this lengthy lawsuit that was highly favorable to Metropolitan. The agreement calls for the plaintiff to immediately separate from Metropolitan.
- c. Charles v. Metropolitan – Defended Metropolitan in this discrimination and retaliation lawsuit. A motion for summary adjudication and motions in limine resulted in this matter being reduced to a single cause of action, and all three individually named Metropolitan defendants have been dismissed. The case is set for trial in July 2006.
- d. Louis H. Cardenas v. Metropolitan – Defended Metropolitan in this discrimination lawsuit involving several causes of action. On May 30, 2006, the California Court of Appeal, Second Appellate District, affirmed the trial court's judgment in favor of Metropolitan in virtually every respect.

3. Support of Human Resources

- a. Human Resources Issues – Provided legal support to several grievance appeal hearings, provided legal advice to Human Resources on individual discipline matters, and defended several discrimination lawsuits.
- b. Policies – Provided legal advice in updating and revising Metropolitan's Operating Policies and Administrative Code to reflect changes in the law and policy, including changes in travel expenses for directors.

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 assistance for the replacement of the Standby Bond Purchase Agreements providing liquidity support for Metropolitan's Water Revenue Bonds, 2000 Authorization, Series B-3 and B-4 and the extension and restructuring of the Standby Bond Purchase Agreements supporting Metropolitan's Water Revenue Bonds, 2000 Authorization, Series B-1 and B-2; Water Revenue Refunding Bonds, 2001 Series B-1 and B-2; Water Revenue Bonds, 2001 Series C-1 and C-2; Water Revenue Refunding Bonds, 2002 Series B; Water Revenue Refunding Bonds, 2003 Series C-1, C-2 and C-3; Water Revenue Refunding Bonds, 2004 Series A-1 and A-2; and Water Revenue Refunding Bonds, 2004 Series C. Legal staff and outside bond counsel prepared and negotiated documents for \$200 million Water Revenue Bonds, 2005 Authorization, Series A, B-1 and B-2 issued on July 28, 2005 and for \$74,140,000 Water Revenue Refunding Bonds, 2006 Series A-1 and A-2 issued on May 25, 2006. Legal staff updated disclosure information on Metropolitan for the Official Statements describing these bond issues and responded to questions on the disclosure information. The Legal Department also assisted with negotiation and documentation of interest rate swap transactions.
- b. Disclosure Notices – Prepared annual statements of year-end financial information regarding both general obligation and water revenue bonds and filed them with Disclosure USA, an internet-based service for filing and dissemination of continuing disclosure notices for municipal bonds.
- c. Rates and Charges – Provided representation in preparation of 2005-06 revenue requirements and annual rate-setting process.

GOAL NO. 7 - LEGISLATION

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

Activities:

1. Federal Legislation

- a. Energy Policy Act of 2005 – Provided legal assistance in preparing text for this bill enacted by Congress which ensures Metropolitan's priority use of its 230kV transmission line to serve CRA pump load.

- b. Central Valley Project Improvement Act Reform Legislation – Provided legal support, analysis, and drafting in support of legislation intended to amend the Central Valley Project Improvement Act.
2. State Legislation
- a. Water Quality - Provided legal support on various legislative measures, including AB 672, a bill intended to expand recreation on publicly owned reservoirs.
 - b. Miscellaneous Legislation – Continued to monitor AB 1245 (Wolk), dealing with establishment of a formal funding mechanism for the EWA, and SB 113 (Machado), attempting to define the CALFED “beneficiary pays” principles. Provided legal support on AB 1234 (Salinas), a bill mandating ethics training and limiting compensation for public officials; SB 1506 (Margett), which would facilitate and expedite power procurement by the SWP; SB 1574 (Kuehl), requiring DWR to study the option of reducing exports from the Bay-Delta; AB 1244 (Wolk), substantially revising the CALFED Bay-Delta Authority; SB 1640 (Kuehl), a new version of the water management reform bill from last year (SB 820); and several bills dealing with flood protection and development in flood areas..

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. General
 - a. Public Records Act – Responded directly and provided legal support to staff in responding to numerous Public Records Act requests.
 - b. MWD Administrative Code – Provided legal support in the revision and consolidation of the Administrative Code contracting provisions.
- 2. Fair Political Practices Commission (FPPC)
 - a. Conflict of Interest Code – Obtained FPPC approval of Metropolitan’s amended Conflict of Interest Code.
 - b. Statements of Economic Interest – Completed the annual filing for directors and designated employees for the 2005 calendar year and processed required assuming and leaving office forms for directors and employees.
- 3. Ethics
 - a. Support of Ethics Office – Assisted the Ethics Office in preparing Ethics website and Directors’ Ethics Guide; revising the Conflict of Interest Code, the ethics provisions in the Administrative Code and the operating policies; and conducting two ethics workshops for directors and Metropolitan officers. Provided legal assistance on various ethical issues.

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 fiscal year well within the authorized budget.
 - b. Use of In-House Staff in Lieu of External Resources – In several lawsuits, in-house attorneys served as co-counsel with outside attorneys and actively participated in the litigation aspects of the case, thereby decreasing outside counsel costs billed to Metropolitan. In several matters, in-house attorneys successfully represented Metropolitan without the use of outside counsel.
 - 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 redistributing assignments of an attorney who retired during the fiscal year and by continuing support staff training in financial operations; completing three recruitments, two to fill vacant deputy attorney positions and one to fill a vacant legal secretary position; and performing employee evaluations in a timely manner.
 - d. Staff Training - Provided staff training on recent developments in electronic discovery conducted by an attorney well respected as an expert in this field. This information will be used to re-assess Metropolitan's electronic mail policy and may lead to new policies and procedures in this area. Also conducted in-house continuing legal education (CLE) training to satisfy State Bar of California requirements for attorneys and paralegals and to retain Metropolitan's status as a CLE training provider.
 - e. File Management – Completed analysis and design phases of a filing system that will improve tracking and record keeping of non-electronic files. Implementation of an electronic database is in progress.
 - f. Miscellaneous – Created a website for documents pertaining to the Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings in an effort to encourage amici curiae support for the petitions for review before the California Supreme Court. Implemented a method for sharing litigation documents with outside counsel utilizing a secure private network environment. It is anticipated that this system will result in significant cost savings in litigation support.