

- **Legal and Human Resources Committee**

July 8, 2008 Committee Meeting

6c

Subject

Approve General Counsel's Business Plan for fiscal year 2008/09

Description

In February of this year, as part of the budget approval process, we identified the overall objectives for the Legal Department. The detailed business plan that is attached for your approval is consistent with those objectives. However, in light of discussions at the Board's April retreat which identified future challenges, as well as other events subsequent to that February presentation, certain priority areas are highlighted below to specifically draw linkages to the Board's goals as well as to assist in the establishment of more specific goals for the Legal and Human Resources Committee for the coming fiscal year.

Those challenges which require substantial legal input are highlighted in bold.

- **Water supply reliability:**
 - o Pursue a comprehensive legal strategy which proactively addresses legal issues associated with a comprehensive Bay-Delta solution while simultaneously vigorously defending Metropolitan's interest in litigation and administrative proceedings.
 - o Work through the State Water Contractors in ongoing federal (Wanger) and state (Watershed Enforcers) litigation to ensure Metropolitan's interests are protected.
 - o Assist in the consultation process to secure new biological opinions to provide Federal Endangered Species Act compliance and assist California Department of Water Resources to obtain the necessary corollary California Endangered Species Act compliance.
 - o Provide legal support in Metropolitan's efforts to implement temporary and interim measures for the Bay-Delta, including the development of the Bay-Delta Conservation Plan.
 - o Identify possible Delta stressors and provide legal strategy options for consideration.
 - o Defend the Quantification Settlement Agreement and its related agreements, including the All-American Canal project in consolidated cases and any future actions.
 - o Provide legal support in the identification and implementation of new water supplies on the Colorado River, such as options for utilizing the Yuma Desalter and programs with Mexico.
 - o Provide legal support in the development of water transfers and exchanges.
- **Balancing Growth and Sustainability:**
 - o Provide legal support for water resource planning objectives to ensure consistency with the Urban Water Management Planning Act and other requirements.
 - o Provide legal support for Metropolitan initiatives to achieve Metropolitan's goals for reduction of carbon dioxide emissions.
- **Managing Energy Costs:**
 - o Vigorously defend Metropolitan's interest in the Hyatt-Thermalito litigation.

- o Support Metropolitan's efforts to renew its Hoover Power Contract.
- o Provide legal support to ensure that State Water Project energy needs are met in a cost-effective and sustainable manner.
- **Workforce Development and Cultural Changes:**
 - o Support the interest-based labor negotiation process.
 - o Provide the legal support for the implementation of the Human Resources Group Manager's work plan.
 - o Continue to defend Metropolitan in Public Employment Relations Board matters as well as grievance and disciplinary matters.

Additionally, the survey of the Board that was done as part of the retreat process reflected concerns with regard to real property matters. The General Manager has recently announced a reorganization of that group. The Legal Department is prepared to support the increased emphasis in this area, and some assignments within the department have been modified to accommodate this as a priority area.

- **Real Property Matters**
 - o Support obtaining entitlements for properties acquired as part of the Diamond Valley Lake (DVL) effort.
 - o Support the development of a DVL recreational strategy.
 - o Support the expanded work efforts of the newly reorganized Real Property Management Group.

Two other priority areas for the department are:

- **Finance**
 - o Continue to provide the legal support required in particular with regard to the increased need to review and act based upon the unique municipal market conditions.
- **Administrative Matters within the Department**
 - o Continue to aggressively manage outside counsel costs.
 - o Continue to develop and implement a professional pathway program.

Finally, in addition to the department's continuing support of the Board, the department is ready to assist the Board as it moves forward with its Governance and Leadership Committee efforts.

The detailed work plan for fiscal year 2008/09 is attached. ([Attachment 1](#)).

Policy

Metropolitan Water District Administrative Code Section 6436(b): Annual and Quarterly Reports to Legal and Human Resources Committee. (Procedure for Department Head Evaluation and Compensation)

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed actions are not defined as projects under CEQA (Section 15378(b) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

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

Committee Options

Option #1

Adopt the CEQA determination and approve the General Counsel's Business Plan for fiscal year 2008/09.

Fiscal Impact: None

Option #2

Adopt the CEQA determination and redirect the General Counsel's Business Plan for fiscal year 2008/09.

Fiscal Impact: None

Staff Recommendation

Option #1

 6/23/2008
Karen L. Tachiki Date
General Counsel

Attachment 1 – General Counsel's Business Plan Fiscal Year 2008/09

BLA #6131



**General Counsel’s Business Plan
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<p>1. Water Supply – Provide legal support in carrying out the Board of Directors’ priority of ensuring the long-term sustainability of the region’s water supply, including Bay-Delta resources, the Colorado River Aqueduct supply, and local resources programs and strategies.</p>	
<p>State Water Project/Bay-Delta</p>	<p>Provide legal support in implementing temporary and long-term improvements in the Delta, including a multi-species conservation plan developed in a legally sustainable manner to provide regulatory coverage, near-term actions to improve conditions in the Delta, and emergency response actions.</p> <p>Ensure Metropolitan is proactively represented in litigation affecting State Water Project (SWP) water supply, including litigation challenging SWP compliance with federal and state endangered species act requirements.</p> <p>Represent Metropolitan’s interests in litigation regarding other stressors to the Bay-Delta environment, including water quality impacts from Sacramento Regional County Sanitation District’s plant expansion.</p> <p>Represent Metropolitan’s interests in State Water Resources Control Board proceedings, including any revisions or implementation of the Bay-Delta Water Quality Control Plan and its proposed strategic plan.</p>
<p>Colorado River</p>	<p>Ensure that Quantification Settlement Agreement (QSA) litigation is resolved in a manner that supports Metropolitan’s water supply reliability goals.</p> <p>Provide legal assistance in implementing the Lower Colorado River Multi-Species Conservation Program.</p> <p>Provide support on a separate long-term endangered species permit for operation of Metropolitan’s Colorado River Aqueduct.</p> <p>Provide legal assistance for initiatives to develop new water supplies through partnerships with other agencies, including options for utilizing the Yuma Desalter Plan and investigating opportunities for joint water development projects and programs in Mexico.</p> <p>Provide legal assistance in implementing the recent delivery agreement with the Bureau of Reclamation for creation and recovery of intentionally created surplus stored in Lake Mead.</p> <p>Represent Metropolitan in federal court action challenging U.S. Bureau of Reclamation’s operation of Glen Canyon Dam and compliance with federal and state endangered species acts.</p> <p>Provide legal advice in implementing the Palo Verde Irrigation District Fallowing and Land Management Program, management of leases of Metropolitan’s property in the Palo Verde Valley, and other issues</p>



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	related to water delivery and usage in the Palo Verde area.
Integrated Resources Plan	Provide legal support on water resource planning objectives and activities to ensure consistency with the Urban Water Management Planning Act and other related legal requirements.
Local/Regional Water Resources	<p>Provide legal support in development and operation of local/regional resources programs.</p> <p>Provide legal assistance in developing near-term measures for enhanced water conservation, drought management, water recycling, groundwater management, and desalination.</p> <p>Provide legal assistance in formulation and development of state or regional guidelines concerning water quality requirements for groundwater storage of imported and recycled water.</p> <p>Defend Metropolitan in the <i>Northrup Grumman v. Metropolitan</i> litigation arising from the matter filed by the Orange County Water District against Northrop Grumman and several other industrial defendants alleging their activities resulted in contamination of the local groundwater basin.</p>



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2. Energy – Provide legal support to protect and maximize Metropolitan’s existing energy assets and planning for future needs.	
Hyatt-Thermalito	<p>Represent Metropolitan’s interests in litigation challenging the current methodology used by the Department of Water Resources to allocate power costs and revenues associated with the Hyatt-Thermalito Power Complex.</p> <p>Provide legal support in connection with the re-licensing of the Hyatt Thermalito Power Complex by the Federal Energy Regulatory Commission (FERC). Represent Metropolitan’s legal interests in the proposed settlement agreement reached among various federal, state, and local stakeholders involved in the re-licensing process. Represent Metropolitan’s interests in the new license and the proposed settlement agreement before FERC and in other regulatory and judicial forums.</p>
Energy contracts	Protect Metropolitan’s existing energy contracts and advocate and protect Metropolitan’s interests in its energy assets, including Hoover Power.
SWP power issues	Provide legal advice on SWP power issues, including representation of State Water Contractors’ and Metropolitan’s interests.
Energy plan	Provide legal support for development of Metropolitan’s long-term strategic energy plan including assisting with contracts to develop solar and other alternative sources of power at Metropolitan facilities.
Carbon dioxide emissions	Provide legal support for projects, activities, and initiatives to achieve Metropolitan’s goals for reduction of carbon dioxide emissions.



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3. Communications – Provide legal advice on utilization and implementation of new communications technology in accordance with applicable laws and court rules, including e-discovery requirements.	
E-Discovery	Lead multi-department E-Discovery Task Force to develop cost-effective strategies for preservation and retention of electronic documents in compliance with court rules.
Board communications	Provide relevant and timely communications
Compliance	Provide legal advice for utilization of interactive communications technologies in compliance with the Brown Act and other applicable laws.
Telecommunications	Provide legal assistance on telecommunications issues, including acquisition of licenses issued by the Federal Communications Commission, management of Metropolitan's communication towers, and leasing of telecommunication facilities on Metropolitan's towers and property.



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4. Capital Projects – Provide legal support in planning, environmental compliance, and construction of the Board-approved Capital Investment Plan	
Perris Valley Pipeline	Provide legal support in the acquisition of the right-of-way needed for completion of the pipeline.
Diamond Valley Lake	Provide legal support on issues related to the DVL Visitors Center and assist in implementing board-adopted policy for the site. Provide legal assistance for development of recreation infrastructure at DVL.
Inland Feeder Project	Represent Metropolitan in the re-trial of the eminent domain case to acquire right-of-way for the project, <i>MWD v. Campus Crusade for Christ</i> .
Diemer North Access Road	Provide legal assistance on the road construction and defend Metropolitan in pending litigation regarding potential environmental impacts of this proposed project.
San Diego Pipeline No. 6	Provide legal assistance to the project, including study of possible south alignments, acquisition of right-of-way, and preparation of environmental documents.
Central Pool Augmentation	Provide legal assistance to the project, including protection of existing land holdings, possible acquisition of future treatment plant sites, and permitting for ongoing feasibility studies.



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5. Operations – Provide legal advice on statutory and regulatory requirements and compliance for operations programs.	
Risk management	Provide legal assistance on risk management and insurance-related matters, including Metropolitan’s claims and Workers’ Compensation programs.
Annexations	Provide legal assistance on requests for annexation to Metropolitan.
Metropolitan facilities	Assist with negotiations and management issues related to office space leasing at Metropolitan’s Union Station facility and issuance of film permits at Metropolitan facilities
Garvey Reservoir	Provide legal assistance for the proposed changes to operation limits at the reservoir, including negotiations with the City of Monterey Park regarding existing contractual limits.
Service connections	Provide legal assistance for service connection requests by member agencies, and for mutually beneficial interconnection agreements with non-member agencies to increase regional supply and system reliability.
Relocations	Provide legal assistance for relocation of Metropolitan facilities, including preparation of relocation agreements.
Regulatory requirements	Provide legal assistance with environmental studies, documents, and approvals necessary for Metropolitan projects.



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6. Workforce – Provide legal support on various human resources issues to ensure a stable and productive workforce.	
Labor negotiations	Provide legal assistance in negotiating successor memoranda of understanding for the rank-and-file, supervisory, confidential, and professional/managerial bargaining units. Provide legal advice on related actions and procedures.
<i>Cargill v. Metropolitan</i>	Provide legal assistance with the implementation of the settlement in this class action litigation regarding temporary workers’ entitlement to regular employment benefits.
Support of Human Resources	Continue to expand the Legal Department’s ability to provide legal support to Human Resources and to represent Metropolitan in employment litigation, employee relations, and administrative matters.
Legal issues	Provide legal advice and resolution of legal issues, including administration of Metropolitan’s employee benefits (including retirement, death, and deferred compensation benefits); employee misconduct, discipline, and termination; investigations; equal employment opportunity/affirmative action; organizational matters; and policy interpretation.
Litigation	Defend Metropolitan in employment litigation and administrative claims.
Public Employment Relations Board (PERB) matters	Defend Metropolitan before PERB in response to Unfair Practice Complaints.
Grievances and disciplinary actions	Defend Metropolitan before Hearing Officers on challenges to grievance responses and disciplinary actions.
Classification/compensation studies	Provide legal assistance with implementation of studies.
Policies	Provide legal assistance in updating and revising Metropolitan’s Operating Policies and Administrative Code to reflect changes in policy and the law.



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7. Finance – Provide legal assistance with rates and charges, issuance of debt obligations, investment of surplus monies, and other financial activities undertaken by Metropolitan.	
Rates and charges	<p>Provide legal assistance to the CFO in implementing rates and charges and evaluating proposed new charges to meet fiscal challenges.</p> <p>Provide legal advice on revisions to procedures and timelines for adoption of rates and budgets.</p>
Bonds	<p>Provide legal assistance with revenue bonds for capital improvement projects and refunding of outstanding bonds to provide debt service savings.</p> <p>Provide timely, accurate disclosure to bondholders and the financial markets and make disclosure documents easily accessible.</p> <p>Assist with extension or replacement of standby bond purchase agreements supporting variable rate bond issues.</p>
Long-Range Finance Plan	Assist with plan update.
Investments	Provide advice on legality of investments.



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<p>8. Administration – Provide legal support regarding proposed state and federal legislation that may affect Metropolitan’s interests and compliance with statutory and institutional requirements (such as Metropolitan Water District Act and Administrative Code, the Brown Act, the Political Reform Act, and the Public Records Act). Continue to explore and implement ways in which to expand the effectiveness and efficiency of Legal Department operations.</p>	
Governance	<p>Represent Metropolitan’s interests in any litigation challenging its interpretation and implementation of its governing statute and Administrative Code, including implementation and defense of its Water Supply Allocation Plan in <i>Central Basin MWD v. Metropolitan</i>.</p>
Support	<p>Provide legal support to the Board offices, General Manager, Ethics Officer, and General Auditor, including timely legal review of board letters, minutes, and agendas.</p>
Legislation	<p>Represent Metropolitan on legislative issues of concern to Metropolitan in Sacramento and Washington.</p>
Cost Management	<p>Ensure all legal services are provided in a professional, timely, cost-effective and creative manner.</p> <p>Utilize staff attorneys to the maximum extent practicable. Utilize outside counsel, under the procedures set forth in the General Counsel’s Guidelines for Outside Counsel, when necessary for effective representation of Metropolitan.</p> <p>Carry out the department’s functions within its authorized operations and maintenance budget.</p>
Succession planning	<p>Ensure the department has an appropriate professional pathway program to meet current and future legal needs of Metropolitan.</p>
Technology	<p>Analyze departmental needs and current technology trends to ensure cost-effective, effective systems are in place.</p>
Compliance	<p>Ensure compliance with public agency laws. Track changes in law and legal rulings.</p>
Contracting issues	<p>Provide legal review and assistance on procurement and professional services contracting issues, including updating contracting forms, procedures, and policies.</p>
Educational programs	<p>Provide regular continuing legal education programs to legal staff, other departments, and member agency counsel.</p>