



- Legal and Human Resources Committee

June 9, 2009 Committee Meeting

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Subject

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

Description

The General Counsel's 2008/09 business plan provides the framework for the Legal Department's actions during this fiscal year. The attached report provides detailed information regarding the Legal Department's activities during the 2008/09 fiscal year in achieving the objectives set forth in the General Counsel's business plan. Some of the more significant activities are reflected below:

Water Supply

- In the Bay-Delta Endangered Species Act cases, the staff partnered with outside counsel in drafting the complaint filed in *MWD v. U.S. Fish & Wildlife Service* challenging the 2008 delta smelt Biological Opinion (BiOp) and helped coordinate that lawsuit with three other related lawsuits. Legal staff participated with the State Water Contractors in drafting comments on the draft BiOp for salmonids and provided assistance in the lawsuits challenging the longfin smelt take regulations. Staff also assisted in evaluating a possible lawsuit against in-Delta agricultural diverters and monitored other third-party stressor lawsuits.
- Legal staff represented Metropolitan and two employees named as defendants in a federal lawsuit challenging the procedures being used in the Bay-Delta Conservation Plan.
- In *Central Basin MWD v. Metropolitan Water District*, staff successfully negotiated a settlement and in *Solano County Water Agency v. Department of Water Resources*, staff successfully intervened in support of DWR's administration of the State Water Contract's shortage provisions and coordinated legal strategy among DWR and Metropolitan's co-parties.
- Staff assisted in the defense of a CEQA lawsuit filed by environmental groups challenging the Drought Water Bank.
- Obtained affirmation by the Court of Appeal of the dismissal of two cases challenging the All-American Canal Lining Project.
- Prepared for trial in the Quantification Settlement Agreement cases.
- Legal staff reached agreement with Cadiz for dismissal of the remaining actions in *Cadiz, Inc. v. Metropolitan*.
- Staff negotiated and drafted agreements to expand the Palo Verde Irrigation District following program by 15 percent for one year.

Energy

- Legal staff represented Metropolitan's interests in the Hyatt-Thermalito lawsuit by preparing for and conducting a 22-day trial on contract interpretation and submitting an extensive post-trial brief.
- Staff reviewed Metropolitan's Strategic Power Planning effort and California's Global Warming Solutions Act, provided support regarding amendments to existing power contracts, drafted legislation supporting renewal of the Hoover power contract, and monitored State Water Project Power issues.

Communications

- The Legal Department assisted with development of an RFP for e-discovery services, and implemented litigation hold procedures and protocols for use in responding to e-discovery and Public Records Act requests. Staff also responded to an increasing number of Public Records Act requests.

Capital Projects

- Legal staff successfully defended and settled a CEQA challenge to the Final Environmental Impact Report for the Diemer North Access Road Project.
- Staff continued to prepare for re-trial of the Inland Feeder Project eminent domain action against Campus Crusade for Christ, filed a new action to acquire an easement extension from Campus Crusade, and negotiated a settlement agreement with the San Manuel Band regarding their request for compensation.

Workforce

- Metropolitan attorneys handled two labor lawsuits in-house, successfully negotiating a settlement in one case and obtaining a successful removal to federal court and plaintiff's removal of challenged claims in the other case. Legal staff defended Metropolitan in numerous Public Employment Relations Board matters and hearing officer appeals, reducing the number of active hearing officer matters from 79 to 39.

Finance

- Staff provided legal assistance in conjunction with the issuance of numerous bonds; represented Metropolitan in the replacement of remarketing agents; advised Finance staff on responses to liquidity bank, swap counterparty, and bond insurer downgrades; assisted with documents pertaining to downgraded investments; and filed a claim in the Lehman Brothers bankruptcy.

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

BLA #6699



"The Mission of the Legal Department of The Metropolitan Water District of Southern California is to assist Metropolitan by providing a full range of legal services in a professional, timely, cost-effective and creative manner."

General Counsel's Business Plan

Fiscal Year 2008/09

Annual Report

July 1, 2008 to June 30, 2009

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The Metropolitan Water District of Southern California
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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

Activities

State Water Project/Bay-Delta

Endangered Species Act (ESA)

Delta Smelt: In conjunction with outside counsel, filed complaint to challenge the 2008 delta smelt Biological Opinion (BiOp) (*MWD v. U.S. Fish and Wildlife Services*). Proactively coordinated that lawsuit with three other lawsuits challenging the delta smelt BiOp that were brought by other water contractors. Continued to monitor proceedings in the earlier delta smelt case, *NRDC v. Kempthorne*, which is still pending. Participated in State Water Contractor (SWC) strategy discussions regarding Endangered Species Committee and National Academy of Sciences review of Bay-Delta Endangered Species Act (ESA) issues.

Continued to monitor proceedings in *Watershed Enforcers v. Department of Water Resources*, now on appeal, which challenges the California Endangered Species Act (CESA) authorization for operation of the SWP. Assisted in formulation of legal and regulatory strategy for obtaining CESA authorization for SWP operations.

Salmon: Provided legal assistance to the SWC and drafted comments on the draft BiOp for salmonids. Reviewed options for possible legal challenges to the new salmon BiOp expected later in 2009. Continued to monitor proceedings in the pending salmon case, *PCFFA v. Gutierrez*, which challenges the earlier salmon BiOp.

Longfin: Continued to monitor and assist outside counsel in lawsuits brought by the SWP challenging the CESA 2084 take regulation for longfin smelt and the CESA 2081 take permit for longfin smelt. Provided legal assistance regarding the submission of SWC

comments on the longfin status report prepared by the Department of Fish and Game.

Other Stressors: Continued to analyze and evaluate possible enforcement actions against other stressors that adversely impact threatened and endangered species in the Bay-Delta. Continued to assist other counsel in evaluating a possible lawsuit against in-Delta agricultural diverters. Helped coordinate the science research effort among federal and state contractors to analyze impacts of other stressors on threatened and endangered species, including the impacts of ammonia discharges into the Delta. Continued to monitor other third-party stressor lawsuits brought by other water contractors, including lawsuits involving predators, contaminants, and dredging activities in the Delta.

Bay-Delta Conservation Plan (BDCP)

Provided legal assistance on California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), and state and federal ESA issues for the BDCP. Developed alternative approaches and language for governance arrangements for and implementation of the BDCP and alternative Delta conveyance.

Assisted in the representation of Metropolitan and two of its employees who are named as defendants in a federal court lawsuit that challenges the procedures being used in the BDCP.

Drafted agreements for implementing pre-construction phases of a Two-Gate Fish Protection Pilot Project.

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Central Basin MWD v. Metropolitan Water District

Working with outside counsel, defended Metropolitan's Water Supply Allocation Plan in this lawsuit. Prepared and certified administrative record with the court and successfully opposed a motion to depose Metropolitan employees based on the argument that the case must be heard on the administrative record without additional discovery. Successfully obtained an order dismissing plaintiff's CEQA claims and negotiated a settlement.

Solano County Water Agency v. Department of Water Resources

Successfully intervened in this lawsuit to support of DWR's administration of the SWC's shortage provisions and organized other interested State Water Contractors' joint participation. Coordinated legal strategy and discovery activities among DWR and Metropolitan's co-parties.

Butte Environmental Council v. Richvale Irrigation District

Provided legal support to Richvale Irrigation District in its successful defense of a challenge to CEQA compliance regarding 2008 water transfers to Metropolitan and other SWC. This case has been dismissed.

Sacramento Regional County Sanitation District Plant Expansion

Participated with other parties in the appeal of the CEQA challenge to the Sacramento Regional Wastewater Treatment Plant Expansion Project in the Third District Court of Appeal.

State Water Resources Control Board (SWRCB)

Participated with other SWC and Central Valley Project contractors in SWRCB workshops and hearing regarding potential amendment to the Water Quality Control Plan for the Bay-Delta. Successfully convinced SWRCB not to hold a redundant "fact-finding" hearing process in addition to the normal water quality control plan process.

2009 Drought Water Bank

Provided legal advice and drafting for rules regarding participation in the 2009 Drought Water Bank and on terms of agreements for transfer of water to the bank. The agreements have been executed by Metropolitan and other buyers and sellers, resulting in approximately 35,000 AF of transfer water available for Metropolitan in 2009. Assisted in initial response to and defense of a CEQA lawsuit filed by environmental groups challenging the water bank.

Yuba County Water Agency Transfer

Provided legal advice on implementation issues in the long-term transfer of water from Yuba County Water Agency to Metropolitan and other SWC.

Delta Wetlands Water Transfer

Negotiated and developed a water transfer agreement with Delta Wetlands for a direct transfer of water to Metropolitan from the Delta and the associated conveyance agreement with DWR.

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Semitropic Water Storage District Arsenic Treatment Pilot Program

Developed agreement to fund a pilot project in which Semitropic treated groundwater to reduce arsenic to safe levels for delivery to Metropolitan under the existing groundwater storage agreement with Metropolitan. The program resulted in delivery of additional water to Metropolitan in 2008 and could lead to increased deliveries in future years.

Colorado River

Quantification Settlement Agreement (QSA) Litigation

Filed or responded to numerous pretrial motions, including motions to identify and limit issues for trial; motions for scheduling of dispositive motions and for a briefing and trial schedule; and motions for summary adjudication. Trial of the QSA cases is now tentatively set to occur in phases beginning in November 2009 and continuing, with breaks, through January 2010. The QSA cases continued to be handled entirely by Metropolitan's in-house legal staff.

All-American Canal Lining Litigation

Represented Metropolitan at the argument before the Court of Appeal on the appeals in the two state court cases challenging the All-American Canal Lining Project. The Court of Appeal issued its decision on November 24, 2008, affirming the dismissal of both cases. This litigation was handled entirely by Metropolitan's in-house staff.

Cadiz, Inc. v. Metropolitan

Filed successful motion for Judgment on the Pleadings, the court finding no legal basis for the sole remaining issue, breach of fiduciary duty. Cadiz filed a third amended complaint (TAC), and Metropolitan filed a demurrer seeking dismissal of the TAC. Utilized in-house staff as primary drafters of the demurrer to reduce outside counsel costs. Reached agreement with Cadiz for dismissal of the TAC and Metropolitan's cross-complaint with prejudice. This concluded the litigation without further cost and without the possibility of appeal.

Lower Colorado River Multi-Species Conservation Plan

Provided legal advice related to management of the annual financial contributions required by Metropolitan and other California agencies to support the plan. Coordinated with Bureau of Reclamation (Reclamation) on calculating correct contribution levels and long-term financial management to accommodate future program needs. Further assisted the Colorado River Board in preparing reports for compliance with the California incidental take permit under the program.

Indian Water Supply Issues

Provided legal support on issues relating to provision of water to the Pechanga Tribe, including research and negotiations regarding potential annexation of portions of reservation or sale of water to the United States for the benefit of the Pechanga.

Provided legal support related to the provision of water to the Sycuan Band of the Kumeyaay Nation, including research and negotiations regarding potential annexation.

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Continued to provide legal support on issues relating to compensation of the San Luis Rey Indian Tribes for conserved water and an agreement to provide the energy to move water to the San Luis Rey settlement parties. Participated in negotiations regarding modifications to the proposed agreement among the San Luis Rey to settle ongoing litigation as it relates to Metropolitan's Colorado River and other rights.

Additional Water Supply

Drafted agreement and provided legal advice related to Coachella Valley Water District's 4,000 acre-feet reduction in the use of water conserved under the Metropolitan-Imperial Irrigation District water conservation program of 1988.

Drafted agreement amendments, assignments, and easement transfers related to the sale of lands enrolled in the Palo Verde Fallowing and Land Management Program. Provided legal advice on proposals to expand the existing program or to establish new water conservation projects within the Palo Verde Irrigation District (PVID).

Intentionally-Created Surplus (ICS) Program

Provided legal support for consultations with Reclamation regarding implementation and accounting for recovery of ICS Metropolitan created in prior years. Provided legal assistance in resolution of discrepancies in prior decree accounting reports by Reclamation.

Inadvertent Overrun and Payback Policy (IOPP)

Provided legal support for consultations with Reclamation and negotiations with interested parties regarding interpretation of IOPP regulations and decree accounting of federal contractors' water use.

Glen Canyon Trust v. U.S. Bureau of Reclamation, et al.

Provided legal assistance to the United States in obtaining dismissal of claims that challenged the process for developing annual plans for Colorado River operations. Supported federal positions on summary judgment motions alleging non-compliance with federal Endangered Species Act, National Environmental Policy Act, and Grand Canyon Protection Act.

Integrated Resources Plan

Water Supply Allocation Plan

Provided legal advice on process for implementation of Metropolitan's Water Supply Allocation Plan.

Integrated Area Study

Reviewed and commented on the study. Provided legal support on amendments to the MWD Administrative Code to accommodate longer outages on raw water conveyance pipelines as identified by the study.

Local/Regional Water Resources

Orange County Water District v. Northrop Grumman Corp., et al.; Northrop Grumman v. Metropolitan, et al.

Participated in court-ordered mediation and discovery regarding sources of perchlorate in the Orange County groundwater basin. Participated in depositions regarding cleanup plans and analysis of

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groundwater quality. Propounded offensive discovery on co-defendants and defended Metropolitan against cross-complaint.

San Diego County Water Agency (SCDWA) Exchange and Conveyance Agreement

Developed and negotiated an exchange/conveyance agreement with SDCWA for transfer water SCDWA purchased in 2008 and a Conveyance Agreement with DWR facilitating movement of the water. The water was made available for use by Metropolitan in 2008, subject to return to SDCWA in a future year. Developed and negotiated similar agreements for direct delivery of water SDCWA purchased in 2009.

San Gabriel Basin Water Quality Authority, et al. v. Aerojet-General, et al., Aerojet v. Metropolitan

Continued to monitor mediation in Aerojet litigation regarding perchlorate contamination of the Main San Gabriel groundwater basin.

Groundwater Recovery and Storage

Participated in workgroup sponsored by Santa Ana Watershed Project Authority to formulate recommendations to Regional Water Quality Control Board regarding salts and emerging constituents (e.g., pharmaceuticals) in groundwater storage of imported water supplies. Provided legal assistance in analysis and review of proposed new SWRCB guidelines for groundwater storage of recycled water.

Drafted agreements for Metropolitan's assistance with a groundwater recovery project in Los Angeles Department of Water and Power's Tujunga Well Field.

Other Programs

Participated in stakeholder workgroups regarding conjunctive use of groundwater and availability of replenishment water by Metropolitan. Participated in ocean desalination policy advisory group with member agencies. Provided legal analyses of legislative proposals for statewide reductions in urban water use.

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Energy

Provide legal support to protect and maximize Metropolitan's existing energy assets and planning for future needs.

Activities

Hyatt-Thermalito

Represented Metropolitan's interests in *Alameda County Flood Control and Water Conservation District, Zone 7, et al. v. California Department of Water Resources*, involving energy cost allocation issues. Assisted outside counsel in completing discovery and preparing for the first phase of trial on contract interpretation. This work included: (1) completing all written discovery; (2) preparing for, defending, and/or taking additional depositions; (3) drafting a joint Statement of Undisputed Facts, which contained over 200 factual stipulations; (4) preparing and/or compiling nearly 1,000 evidentiary and demonstrative exhibits; (5) drafting Intervenor's 50-page opening trial brief; (6) preparing Intervenor's opening statement and accompanying PowerPoint presentation, and assisting DWR and the Attorney General (AG) in preparing theirs; (7) compiling and organizing various witness-specific documents (8) drafting outlines of anticipated testimony and preparing proposed questions for 22 potential trial witnesses; (9) meeting with and preparing 14 witnesses slated to testify on behalf of DWR and/or Intervenor; (10) preparing and/or defending five evidentiary motions, all of which were decided favorably to Intervenor; and (11) attending and participating in various meetings, conferences, and hearings. Participated in 22-day trial on contract interpretation and daily strategy sessions with outside counsel, DWR, and the AG during such trial. Prepared and submitted extensive post-trial brief.

Oroville Reservoir

Provided legal support in connection with the ongoing relicensing process for the hydroelectric facilities at Oroville Dam. Worked on maintaining support for the settlement agreement executed in March 2006, which contains the proposed terms and conditions for the new license. Assisted in defending a CEQA lawsuit filed by the Counties

of Butte and Plumas in August 2008, which challenges the environmental impact report (EIR) prepared by DWR in support of the new license.

Energy Contracts

Provided legal support regarding amendments to existing power contracts to accommodate the implementation of the California Independent System Operator's (CAISO) new market design. Provided legal support concerning amendment of Metropolitan's Phase I small hydro power agreement with DWR to accommodate Metropolitan's use of Yorba Linda Power Plant energy to serve Diemer Water Treatment Plant.

Provided legal advice and drafted federal legislation in support of renewal of the Hoover power contract based on existing terms authorized by the Hoover Power Plant Act of 1984.

State Water Project Power Issues

Monitored CAISO's April 1, 2009 implementation of its new market design and intervened in relevant administrative proceedings regarding the redesign in order to protect Metropolitan's and SWP's interests.

Monitored administrative requests for proposed wholesale electricity rate increases filed by Pacific Gas & Electric and Southern California Edison that could have significantly increased SWP energy costs, and participated in extensive stakeholder negotiations on these proposed increases.

Strategic Power Plan

Continued to provide legal support and review of Metropolitan's Strategic Power Planning effort, including approaches to and

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Energy

Provide legal support to protect and maximize Metropolitan's existing energy assets and planning for future needs.

documentation of agreements for installation of solar generation facilities at various Metropolitan plants.

Electric Reliability Standards

Provided legal support regarding reporting and compliance with mandatory electric reliability standards. Provided legal support for Metropolitan's reporting of compliance with delegated tasks under Metropolitan's Reliability Standards Agreement with Southern California Edison.

Climate Change

Provided legal support and review of the rulemaking for AB 32, California's landmark Global Warming Solutions Act, including review and response to the proposed administrative fee regulation.

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Communications

Provide legal advice on utilization and implementation of new communications technology in accordance with applicable laws and court rules, including e-discovery requirements.

Activities

E-Discovery

Provided legal assistance with mapping District-wide use of various computer applications as a prerequisite to determining the most appropriate e-discovery software and hardware. Drafted litigation hold and related procedures. Prepared and implemented protocols for use in responding to e-discovery and Public Records Act requests as well as a system to better track responses to requests and time necessary to respond.

Board Communications

Continued to provide comprehensive, timely, and accurate reports to the Board.

Public Records Act

Responded directly to the public and provided legal support in responding to numerous Public Records Act requests.

Telecommunications

Provided legal support on licensing requirements for new District-wide unified radio system, including negotiations with other utilities regarding frequency sharing and applications proceedings before the Federal Communications Commission.

Negotiated telecommunications leases both for Metropolitan as the tenant on third-parties' towers and for Metropolitan as the landlord on its towers.

Coordinated with Riverside County on its Public Safety Enterprise Communications Project that will provide mutual benefits to Metropolitan and the County via reciprocal telecommunications leases.

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Capital Projects

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

Activities

Perris Valley Pipeline

Continued to represent Metropolitan in the sole remaining pending eminent domain action (*Metropolitan Water District v. Lewis Street Properties*) to acquire easement rights for construction of the South Reach. Drafted agreements to allow construction to proceed pending acquisition of remaining easements and provided legal advice. Continued negotiations for settlement of potential inverse condemnation claim related to interference with access and water rights on the North Reach of the project.

Provided legal support in management of the construction contract, change orders, and notices of claim.

Diamond Valley Lake

Provided legal support on issues related to DVL Visitors Center, including meeting with several entities in an attempt to develop a long-term use proposal for the site. Provided legal advice relating to, and participated in the evaluation of, the request for qualifications for development of Metropolitan's property, including the recreation areas. Provided legal advice on the potential for working with Eastern Municipal Water District to create a reclaimed water storage facility on Metropolitan's property.

Inland Feeder Project

Provided legal support on continued management of the construction contract and contracting to sell surplus equipment. Documented and processed a Settlement Agreement with the San Manuel Band regarding their request for compensation.

Continued, with assistance of outside counsel, preparations for re-trial of the eminent domain action against Campus Crusade for Christ. In-house counsel also filed and is prosecuting a new action to acquire an easement from Campus Crusade.

Diemer North Access Road Project

Defended and successfully settled a CEQA challenge to the Final EIR in *Hills for Everyone v. Metropolitan*. Provided legal support for initial regulatory and construction activities.

San Diego Pipeline 6

Provided legal advice regarding the potential for acquiring rights-of-way for the project. Continued to provide legal support on issues relating to alignment.

Capital Contracts

Continued to provide support in the preparation, review, and approval of contracts for capital projects and to assist in the review of change orders and claims. Participated in committee to review and implement modifications to standard specifications and contracts.

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Operations

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

Activities

Water Quality Issues

Continued to provide legal support and responded to public inquiries about the fluoridation program begun in 2007. Assisted in tracking and keeping Metropolitan's Board informed of ongoing issues affecting Colorado River water quality, including the federal cleanup effort at Moab, Utah to address uranium mill tailings; PG&E's remediation of the chromium 6 contamination associated with its Topock facility; and the Las Vegas Wash cleanup effort to abate perchlorate groundwater contamination.

Air Quality Issues

Provided legal support for air quality compliance issues, including response to violations issued by Air Quality Management Districts and advice concerning recent court decisions impacting air quality permitting.

Service Connections

Provided legal assistance for agreements regarding new and modified member agency service connections. Provided legal support for compliance with and drafting of board-approved non-member agency interconnection agreements, including agreements with San Bernardino Valley Municipal Water District, Castaic Lake Water District, and San Gabriel Valley Municipal Water District.

Relocations

Provided legal support in the relocation of Metropolitan facilities, including portions of the Santa Monica Feeder and the Sepulveda Feeder, and drafted related agreements.

Sacramento Office

Provided legal support for nine-year lease extension for the Sacramento office with substantial tenant improvements.

Real Estate Issues

Provided legal counsel on third-party property rights requests and inquiries on such matters as leases, licenses, entry permits, and road easements. Provided legal counsel regarding the acquisition of property interests necessary for Metropolitan operations, including access and telecommunication leases. Provided legal assistance with responses to and removal of encroachments on Metropolitan property.

Risk Management

Provided legal assistance on risk management and insurance-related matters, including Metropolitan's claims and Workers' Compensation programs. Analyzed and negotiated potential Employment Practices Liability Insurance policy. Provided legal advice regarding disposition of claims filed under the Government Claims Act, including the rejection of such claims when appropriate. Approved several Workers' Compensation settlements within delegated authority. Provided legal advice and representation in a major Workers' Compensation excess insurance coverage dispute.

Workplace Health and Safety Issues

Provided legal assistance in responding to citations issued to Metropolitan by Cal/OSHA alleging violations of various health and safety regulations.

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Workforce

Provide legal support on various human resources issues to ensure a stable and productive workforce.

Activities

Labor Agreements

Provided legal assistance in interpreting and implementing the existing bargaining unit MOUs with a focus on ensuring proper, uniform, and equitable application. Provided legal advice in connection with the negotiation of all bargaining unit MOUs.

Cargill v. Metropolitan

Provided oversight on this litigation involving three consolidated class action lawsuits challenging Metropolitan's past use of District temporary employees, independent consultants, and temporary agency workers. Directed ongoing implementation of the settlement agreement, with a current focus on further limiting liability and assisting Human Resources to submit enrollment applications for individual class members eligible for CalPERS benefits, resulting in savings of approximately \$2.6 million.

Support of Human Resources

Expanded the Legal Department's ability to provide legal advice to Human Resources and to represent Metropolitan in personnel litigation, employee relations, and administrative matters. Handled most matters in-house during the past twelve months. A working committee consisting of the General Counsel, Assistant General Counsel, and two staff attorneys responsible for human resources issues meets regularly to coordinate representation of Metropolitan in employment/labor issues. In addition, a working committee representing the Legal Department, Employee Relations, and Water Systems Operations meets regularly to discuss employee relations matters and to limit the number of PERB and grievance challenges being lodged. Further, a staff attorney responsible for human

resources issues serves on Metropolitan's Strategic Human Resources Advisory Council along with representatives of Human Resources and management.

Litigation

Handled labor lawsuits in-house: *Gregg Whittlesey v. MWD* (alleging wrongful termination in violation of public policy, defamation, and intentional infliction of emotional distress) and *Juli Smith v. MWD*, et al. (alleging violation of a whistleblower protection statute, wrongful termination in violation of public policy, gender discrimination and harassment, and intentional infliction of emotional distress). Litigated the Whittlesey case for eleven months and negotiated settlement of the case prior to trial. Whittlesey case work included written and document discovery, depositions, discovery motions, preparation of a summary judgment motion, and a mediation. Litigated the Smith case since March 2008, representing Metropolitan and five employee defendants. Smith case work included preparation of a successful removal to federal court, preparation of motions to dismiss and strike which resulted in the plaintiff's removal of the challenged claims, and written and document discovery, depositions, discovery motions, and a settlement conference. Prepared an answer in *AFSCME Local 1902 v. MWD*, which seeks to prevent disclosure of union emails pursuant to a request by an individual pursuant to the Public Records Act. A scheduling conference is calendared for July 2009.

PERB Unfair Labor Practice Charges

Defended Metropolitan's interests and management rights in several matters before the Public Employment Relations Board (PERB) alleging unfair labor practices pursuant to the Meyers-Milias-Brown Act. Of the eighteen PERB matters that have been active during the fiscal year, ten have been dismissed based on objections raised by the Legal Department, two have been settled with no admission or finding of wrongdoing on Metropolitan's part, one matter was

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Workforce

Provide legal support on various human resources issues to ensure a stable and productive workforce.

withdrawn by the bargaining unit, and five are still pending. Of the ten dismissals, two have been appealed. The Legal Department represented Metropolitan in a two-day formal hearing (administrative trial) of a PERB complaint, which is currently under submission. The Legal Department will continue to defend Metropolitan's interests in the two appeals and the five remaining charges.

Bargaining Unit Grievances and Appeals

Defended Metropolitan's interests in hearing officer appeal requests lodged by bargaining units. The Legal Department processed hearing officer appeals involving 38 grievances and seven disciplinary actions during the fiscal year. We are awaiting decisions from hearing officers on 20 grievances that have been consolidated into five hearings, four of which were handled in-house. We have received two hearing officer decisions involving job audit appeals; management prevailed on one matter, and AFSCME prevailed on the second matter. The Legal Department negotiated settlements of twelve appeals involving ten grievances and two disciplinary actions. Due to the Legal Department's action in addressing the backlog of hearing officer appeal requests, the number of active hearing officer matters has been reduced from approximately 79 to 39.

EEO and Other Claims

Provided investigation oversight for EEO and other claims initiated by employees, including providing recommendations for remedial actions. Represented Metropolitan in EEO agency actions, including mediation.

Classification/Compensation Studies

Participated as a group primary contact in the collection and review of data that will be used to write new job descriptions.

Policies

Revised Legal Department Primer to include all subjects required for ethics training under AB 1234.

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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

Rates and Charges

Assisted with preparation of revenue requirements and budget. Advised on water rates, including new Delta Supply Surcharge, and readiness-to-serve and capacity charge resolutions and notices.

Bonds

Prepared redemption and disclosure documents and assisted outside bond counsel with:

- Water Revenue Refunding Bonds, 2009 Series A-1, A-2 and B, to refund \$333 million of outstanding variable rate water revenue bonds issued in 2003 and supported by a standby bond purchase agreement with Dexia Credit Local that expires June 30, 2009. The 2009 Series A-1 and A-2 Bonds were issued as SIFMA Index Bonds, an innovative variable rate structure that does not require additional liquidity support from a commercial bank like Dexia.
- Water Revenue Refunding Bonds, 2008 Series B, to refund Metropolitan's Water Revenue Refunding Bonds, 1998 Series A and Water Revenue Refunding Bonds, 1996 Series B maturing on or after July 1, 2009.
- Water Revenue Refunding Bonds, 2008 Series C, to refund Metropolitan's Water Revenue Refunding Bonds, 1996 Series B and provide for termination of an interest rate swap with AIG.
- Water Revenue Bonds, 2008 Authorization, Series A and B, to provide construction financing for the Capital Investment

Program. Legal staff prepared the authorizing resolution for up to \$750 million of new money bonds.

Represented Metropolitan in replacement of the remarketing agents on three variable rate water revenue bond issues. Staff attorneys negotiated and prepared agreements with the three new remarketing agents, and provided the required notices to UBS, the paying agents, standby banks and municipal bond information repositories.

Advised Finance staff on responses to liquidity bank, swap counterparty and bond insurer downgrades. Prepared and filed secondary market disclosures.

Represented Metropolitan on the extension of outstanding standby bond purchase agreements supporting Metropolitan's Water Revenue Refunding Bonds, 2001 Series C-1 and C-2. The amendments permitted remarketing of these variable rate bonds, in the principal amount of \$200 million, to continue.

Provided legal support in responding to the financial and contractual ramifications of the State's January 2009 freeze of Proposition 13 bond funds committed to ongoing Metropolitan groundwater storage projects and Desalination Research and Innovation Partnership projects.

Prepared annual financial information filings for water revenue bonds and general obligation bonds.

Investments

Assisted with amendment to Statement of Investment Policy to accommodate qualifying investments that were downgraded. Filed bankruptcy claim for the payment of corporate notes issued by Lehman Brothers Holdings, Inc. and acquired as part of Metropolitan's investment portfolio.

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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 the 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.

Activities

Support

Reviewed board letters, committee minutes, and staffed board meetings. Met regularly with the Board Chairman to discuss legal issues. Continued regular meetings with the General Manager and General Auditor. Provided assistance to the Ethics Office on various issues.

Legislation

Analyzed and drafted language regarding BDCP governance and new conveyance facilities implementation, water transfers, and Bay-Delta bonds. Provided legal advice and assisted in drafting state legislation related to the quagga mussel infestation, including preparation of amendments to AB 2065 imposing new restrictions on reservoir operators and the proposed bond measure to provide funding for projects to control invasive species. Provided review and comment on bills relating to public contracting, project labor agreements and solar/climate change issues. Analyzed and drafted language for Metropolitan-sponsored legislation regarding water conservation retrofits and water conservation practices of community interest developments. Provided review and drafting on statewide water conservation targets legislation.

Cost Management

Notified outside counsel of cost management initiatives, including moratorium on increases in hourly rates. Increased scrutiny of staffing of matters and adherence to Metropolitan's Outside Counsel Guidelines.

Litigated several matters using staff counsel exclusively, including *MWD v. XO Communications*, *MWD v. IEUA*, *Bisharat v. Kostelecky*, *Ramirez v. Charbonneau*, *Eastridge v. MWD*, *Chavez, et al. v. MWD*, *Whittlesey v. MWD*, and *Smith v. MWD, et al.*

Reallocated the assignments of three department employees who retired in December, including outsourcing the operation of the law library.

Decreased travel through increased utilization of voice and video teleconferencing and limiting travel to critical needs.

Eliminated a number of library subscriptions by identifying other sources for obtaining certain research materials. Decreased memberships by eliminating memberships in non-essential organizations.

Carried out the Legal Department's functions within its authorized O&M budget.

Succession Planning

Provided comprehensive training to legal staff on power matters to accommodate successful succession planning.

Technology

Initiated a comprehensive review of the department's case and document management and calendaring needs, including reviewing available products and technology trends.

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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 the 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.

Compliance

Updated the Conflict of Interest Code as required by the Political Reform Act and Fair Political Practices Commission. Educated staff on new Gift to Public Agency requirements and prepared board presentations on the subject. Provided legal advice and made presentations on reporting time spent on state and federal legislative and administrative matters.

Contracting Issues

Provided legal review on procurement and professional services contracting issues. Provided legal support in determining protocol for handling specialized contracts involving procurement, service, and capital components.

Educational Programs

Provided a continuing education course for attorneys and paralegals on The Keys to Success on Appeal. Instructors were from the Horvitz & Levy law firm. Provided a continuing education course for attorneys and paralegals on Ethics for the Savvy Lawyer conducted by the Bergman and Dacey law firm. Conducted a refresher course for continuing education credit on LexisNexis legal research tools.

Minimized training and continuing legal education (CLE) costs by providing staff access to low-cost teleconferences, webinars, and other on-site opportunities to meet CLE requirements and provide training in areas of current topical interest to Metropolitan.