



- General Counsel's 2009/10 Business Plan Semiannual Report

Summary

The semiannual report on the General Counsel's 2009/10 business plan describes the Legal Department's activities from July 1, 2009 through December 31, 2009, toward accomplishing the goals and objectives in the business plan that was approved by the Board in June 2009.

Attachments

General Counsel's Business Plan for Fiscal Year 2009/10 Semiannual Report

Detailed Report

The attached report provides detailed information regarding the Legal Department's activities during the first six months of the 2009/10 fiscal year in achieving the objectives set forth in the General Counsel's business plan. Some of the more significant activities are summarized below:

Water Supply

- Legal staff provided extensive legal assistance, and negotiated and drafted language in successful enactment of the 2010 Delta Water Package by the California Legislature.
- The department continued to provide legal assistance in a number of Bay-Delta Endangered Species Act cases.
- Staff participated in the continuing development of the Bay-Delta Conservation Plan.
- Legal staff obtained dismissal of litigation challenging the Water Supply Allocation Plan.

Balancing Growth and Sustainability

- Staff provided legal support for the AB 32 rulemaking, California's landmark Global Warming Solutions Act, including reviewing and responding to the proposed regulations.

Managing Energy Costs

- Legal staff successfully represented Metropolitan's interests in the Hyatt-Thermalito litigation.
- Legal staff provided assistance in defending a CEQA lawsuit challenging the environmental impact report prepared in support of the new Oroville Reservoir license.
- Legal staff assisted in drafting the proposed Hoover Power Allocation Act pending before Congress and supporting documents.
- Staff assisted with development and implementation of the Energy Management Plan, including the legal and regulatory issues associated with Metropolitan's short- and long-term power procurement.

Operations

- Legal staff filed a claim and coordinated with Arizona and Nevada agencies on strategies for continued perchlorate remediation in Tronox bankruptcy proceeding.

Workforce Development and Cultural Changes

- The Legal Department defended Metropolitan's interests in employment litigation matters.
- Legal staff defended Metropolitan's interests in Public Employment Relations Board matters, obtaining a number of positive outcomes.

Board Report (General Counsel's 2009/10 Business Plan
Semiannual Report)

- The number of bargaining unit grievances and appeals significantly reduced in 2009.

Finance

- Legal staff assisted with numerous bond issues, including Build America Bonds.



General Counsel's Business Plan Fiscal
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July 1, 2009 – December 31, 2009

- Water Supply
- Balancing Growth and Sustainability
- Managing Energy Costs
- Operations
- District Governance
- Workforce Development and Cultural Changes
- Real Property Matters
- Finance
- Administrative Matters within the Department

Water Supply

Bay-Delta

Provided legal assistance, and negotiated and drafted language included in successful 2010 Delta Water Package.

Coordinated activities of certain State Water Contractor (SWC) members and DWR defending State Water Project supplies in *Solano County Water Agency v. DWR*.

Worked with SWC to file complaints with State Water Resources Control Board alleging illegal diversions by Delta diverters.

Endangered Species Act (ESA)

Delta Smelt: Continued to provide legal assistance to outside counsel in federal court litigation challenging the 2008 delta smelt Biological Opinion (BiOp) (*Metropolitan v. U.S. Fish and Wildlife Services*). Helped coordinate that lawsuit with other lawsuits challenging the delta smelt BiOp that were brought by other water contractors and parties. Secured scientific expertise for that litigation. Continued to monitor proceedings in the earlier delta smelt case, *NRDC v. Kempthorne*. Participated in SWC and federal water contractor strategy discussions regarding National Academy of Sciences (NAS) review of Bay-Delta Endangered Species Act issues, and helped secure an NAS review of Bay-Delta scientific 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. Participated in SWC formulation of legal and regulatory strategy for obtaining CESA authorization for SWP operations. Provided legal assistance in subsequent lawsuits challenging the CESA authorization for delta smelt and salmon which are pending in state court.

Salmon: Provided legal assistance to outside counsel representing Metropolitan in federal court litigation challenging the 2009 salmon BiOp. Helped coordinate that lawsuit with other lawsuits challenging the salmon BiOp that were brought by other water contractors and parties. 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 SWC challenging the CESA 2081 take permit for longfin smelt.

Other Stressors: Continued to analyze and evaluate possible enforcement actions against other stressors that adversely impact threatened and endangered species in the Bay-Delta. 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. Negotiated and drafted agreement among SWC for management and allocation of water obtained by contractors through water transfers in 2010.

Bay-Delta Conservation Plan (BDCP)

Participated in SWC's BDCP legal committee and provided legal advice and legal opinions in development of the BDCP. Represented Metropolitan and its employees who, along with other water contractors and state and federal employees, were named as defendants in a federal court lawsuit that challenged the procedures being used in the BDCP. Provided legal assistance in formulating strategy among the defendants and wrote a large part of the motion papers by the state and federal water contracts that brought about dismissal of that lawsuit.

Transfers and Exchanges

Negotiated and drafted several water transfer agreements between SWC member buyers and Sacramento Valley sellers for 2010.

Negotiated and prepared a draft agreement for a 2010 water transfer between Metropolitan and Delta Wetlands.

Provided legal assistance in resolving disputes regarding implementation of Metropolitan's groundwater storage and exchange agreements.

Drought Water Bank

Provided legal advice related to the 2009 Drought Water Bank. Assisted in response to and defense of a CEQA lawsuit filed by environmental groups challenging the water bank. Provided legal assistance in compilation and review of administrative record. Assisted in review and preparation of Motion to Dismiss, Answer to Petition and other pleadings. Participated in various Case Management and Status Conferences held by the Court.

Water Supply Allocation Plan (WSAP)

Obtained Central Basin Municipal Water District's dismissal of its litigation challenging the Water Supply Allocation Plan (WSAP). Reviewed a number of appeals under the WSAP.

Provided legal assistance on revising the conservation program operations and agreements.

Colorado River

Provided legal assistance in protecting existing Colorado River water supplies through negotiations on inadvertent overrun policies, identifying and limiting potential use of water for new solar power plants, and removing or reducing other existing or potential unlawful uses.

Assisted in negotiating and drafting agreements, which were approved by the Board in September 2009, for funding the pilot project for short-term operation of the Yuma Desalting Plant that will provide Metropolitan with approximately 23,000 acre-feet of Colorado River water.

Conservation Strategies and Programs

Provided legal assistance in the review of the Conservation Credits Program.

Balancing Growth and Sustainability

Urban Water Management Plan

Provided legal support for water resource planning to ensure consistency with the Urban Water Management Planning Act and other requirements in developing a revised 2010/2011 Urban Water Management Plan.

Integrated Resources Plan

Provided legal support for development of an updated Integrated Resources Plan.

Desalination Project

Developed an agreement to provide incentives for water produced by the Carlsbad Ocean Desalination Project.

Climate Change

Provided legal support for initiatives to achieve Metropolitan's goals for reduction of greenhouse gas emissions.

Provided legal support for the AB 32 rulemaking, California's landmark Global Warming Solutions Act, including reviewing and responding to the proposed administrative fee regulation, the proposed Renewable Electricity Standards, and the preliminary draft regulation for a California cap-and-trade program. Provided legal support and review of the Natural Resource Agency's proposed amendments to CEQA with regard to the analysis and mitigation of effects of greenhouse gas emissions.

Managing Energy Costs

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. A bench trial was conducted in late 2008, and post-trial briefs were filed in early 2009. On August 21, 2009, the Court issued a tentative ruling in favor of the Department of Water Resources (DWR) and the Intervenor, including Metropolitan, holding that it was permissible for DWR to use revenues derived from the sale or use of Hyatt-Thermalito power to offset State Water Project (SWP) transportation costs, rather than SWP conservation costs. Assisted outside counsel in responding to Plaintiffs' objections to the tentative ruling, which was affirmed by the Court on September 14. Also assisted in preparing a proposed Statement of Decision, which was approved by the Court with no changes on October 16, 2009.

Oroville Reservoir

Provided legal support in connection with the ongoing relicensing process for the hydroelectric facilities at Oroville Dam. Provided legal assistance in defending a CEQA lawsuit filed by the Counties of Butte and

Plumas in August 2008, which challenges the environmental impact report prepared by the California DWR in support of the new license.

Energy Contracts

Provided legal assistance in drafting the proposed Hoover Power Allocation Act and supporting documents. This legislation resolves disputes among the Lower Basin States over the allocation of Hoover power when existing contracts expire in 2017. The proposed legislation will allow existing contractors to renew with only a 5% reduction in power and capacity. That reduction will be used to create a resource pool for new users within the three states. The legislation would avoid the administrative process for re-marketing the power that would otherwise be implemented by the Western Area Power Administration.

State Water Project Power Issues

Provided legal support to ensure that SWP needs are met in a cost-effective and sustainable manner. Provided support for and coordination with the SWC Energy Committee in order to better manage energy costs of the SWP.

Energy Management Plan

Assisted with development and implementation of an energy management plan, including the legal and regulatory issues associated with the District's short- and long-term power procurement.

Electricity Operations

Participated in proceedings at the Federal Energy Regulatory Commission and state administrative agencies involving transmission rate increases, regional transmission operator activities and regulations, and other legal matters affective Metropolitan's electricity operations and costs.

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 (SCE) and for an associated on-site audit.

Operations

Water Quality

Continued to defend Metropolitan against claims that it is liable for perchlorate cleanup costs in Orange County basin. Intervened in Tronox bankruptcy proceeding, working with Nevada and Arizona entities.

Monitored activities of Regional Water Quality Boards considering adoption of municipal storm water discharge permits having the potential to impact Metropolitan's operations.

Service Connections

Negotiated and prepared service connection agreements for new or modified member agency connections. Provided legal assistance on regulatory and real estate issues, including CEQA issues, arising out of service connection requests. Provided legal assistance regarding adoption of updated service connection policies.

Workplace Health and Safety Issues

Provided legal advice to Workplace Health and Safety staff as they perform internal review of policies and procedures.

District Governance

Legislation

Analyzed proposed and newly-enacted legislation affecting Metropolitan. Prepared or reviewed proposed legislation and amendments. Assisted with development of legislative strategy.

Provided legal advice on enacted bill to achieve 20% water use reduction by 2020. Performed research and drafting assistance to author's staff and supporting organizations.

Provided legal assistance drafting legislation protecting public water supply agencies from liability for delivery of water that may be infested with quagga mussels. The bill was passed by the Legislature with the support of the Department of Fish and Game but was vetoed by the Governor. The Legal Department is assisting with the response to the Governor's concerns and the re-introduction of the bill.

Public Records Act Requests

Responded to a number of Public Records Act requests and document subpoenas.

E-Discovery

Participated on Metropolitan's evaluation team that selected a firm to provide and implement the software for an electronic discovery management system. This system will enable Metropolitan's legal and Information Technology staff to effectively and efficiently identify, collect, and review electronically stored information, which Metropolitan is required to provide in litigation and in response to Public Records Act requests. Reviewed and updated Metropolitan's procedures for preservation of documents connected with pending litigation, in compliance with recent court decisions.

Support

Reviewed board letters and committee minutes, and staffed board meetings. Met regularly with 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.

Updated the Administrative Code to reflect the new committee structure, to conform to current practice and policies, and to clean up inconsistencies and outdated references.

Workforce Development and Cultural Changes

Litigation

Defended Metropolitan's interests in several employment litigation matters. Provided legal assistance with implementation of the *Cargill* class action settlement.

Public Employment Relations Board (PERB) Unfair Labor Practice Charges

Defended Metropolitan's interests in several PERB matters that alleged unfair labor practices, including the dismissal of three charges based on Metropolitan's position statement, the successful administrative trial of one charge, the success on appeal of two charges, and the settlement of one charge.

Bargaining Unit Grievances and Appeals

Defended Metropolitan in hearing officer appeals lodged by bargaining units, significantly reducing the number of active cases. Received favorable decisions in four cases and settled four cases.

Labor Agreements

Provided legal assistance regarding the MOU negotiations with Metropolitan's four bargaining units.

Human Resources Support

Provided investigation oversight for EEO claims, security matters, and misconduct reports, providing recommendations for remedial actions where appropriate.

Provided legal assistance with labor/employment law compliance and strategic advice, including with respect to employment actions, employee relations, reasonable accommodation and leave issues, affirmative action and EEO matters, wage/hour issues, drug/alcohol issues, and potential workforce violence matters.

Provided legal assistance in interpreting and implementing the existing bargaining unit MOUs, Operating Policies, and employee-related Administrative Code sections, with a focus on ensuring proper, uniform, and equitable application.

Participated in Metropolitan's Strategic Human Resources Advisory Council. Created an "avoiding legal risks" primer for managers and presented the subject at the Management Forum.

Real Property Matters

Eminent Domain

Negotiated the settlement of the two remaining eminent domain actions to acquire property interests for the Inland Feeder Project on property located in San Bernardino County and owned by Campus Crusade for Christ. The settlement brings to an end litigation that has been ongoing for twelve years and avoids a re-trial that was estimated to cost millions of dollars in attorney and expert witness fees.

Annexations

Supported annexation process and development of related water supply policies.

Real Property and Asset Management

Supported the expanded work efforts of the Real Property Management Group.

Finance

Bonds

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

- \$250,000,000 Water Revenue Bonds, 2008 Authorization, Series D and \$81,065,000 Water Revenue Refunding Bonds, 2009 Series D. The \$250 million Water Revenue Bonds are Build America Bonds.
- \$26,050,000 Water Revenue Refunding Bonds, 2009 Series E, issued to replace variable rate bonds supported by a Lloyds TSB Bank standby bond purchase agreement with fixed rate bonds.
- \$45,515,000 Waterworks General Obligation Refunding Bonds, 2009 Series A, issued to provide debt service savings.

Prepared remarketing statement and assisted with documentation for the first remarketing of Metropolitan's Water Revenue Refunding Bonds, 2009 Series A-2. These bonds bear interest at a rate that is reset at least annually through remarketing of the bonds.

Posted Metropolitan's annual financial information filings for fiscal year 2008-09, pursuant to continuing disclosure requirements for outstanding bond issues. For the first time, these filings were posted on the new Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board.

Investments

Monitored Metropolitan's claim for the payment of corporate notes issued by Lehman Brothers Holdings, Inc. in the Lehman bankruptcy proceedings.

Administrative Matters within the Department

Cost Management

Managed legal costs related to eminent domain proceedings by handling the two cases filed for the Perris Valley Pipeline project with in-house attorneys and providing the legal assistance needed to complete the voluntary acquisitions for that project.

In-house counsel successfully negotiated settlement terms for the two remaining eminent domain cases filed for the Inland Feeder Project, thereby avoiding the costs that would be incurred to re-try the Campus Crusade case. This litigation has been ongoing for twelve years and was expected to continue for at least three more years after the California Supreme Court reversed the original judgment entered after a court trial, and ordered that the case be re-tried before a jury. The settlement avoids millions of dollars in litigation costs, and costs are being further reduced by in-house counsel taking the lead in drafting the settlement pleadings.

Continued to reallocate workload resulting from three vacant administrative positions. These positions will be eliminated in the proposed 2010-11 budget.

Education

Provided a continuing legal education workshop for staff on Testimony and Technology that covered topics such as the use of video depositions and other new litigation support technology.

Contracting

Provided legal assistance for procurement and professional services contracting issues, including streamlining of contract review procedures, revisions to Metropolitan's General Conditions, and increased coordination with contract services and risk management staff.