



● **Legal and Claims Committee**

7/13/2010 Committee Meeting

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**Subject**

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General Counsel's Annual Report on fiscal year 2009/10 Business Plan Accomplishments

**Description**

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The General Counsel's Annual Report on fiscal year 2009/10 Business Plan Accomplishments provides the framework for the Legal Department's activities during this fiscal year. Some of the more significant activities are reflected below:

Water Supply

- In the Bay-Delta Endangered Species Act cases, staff continued to provide legal assistance to outside counsel in *Consolidated Delta Smelt Cases* challenging the 2008 Delta smelt Biological Opinion (BiOp), the Consolidated Salmon Cases, and the State Water Contractors' (SWC) lawsuit challenging the longfin smelt take regulations.
- Staff assisted analysis by state and federal water contractors who are monitoring and analyzing whether Ocean Harvest Biological opinions on impacts of ocean fishing are adequate and monitoring California Endangered Species Act litigations by the SWC challenging the consistency determination and in *Water Enforcers v. DWR*.
- Legal Department attorneys participated in the National Academy of Sciences/National Research Council proceeding reviewing the Delta smelt and salmon BiOps. Assisted and participated in evaluating possible enforcement actions against in-Delta agricultural diverters and monitored other third-party stressor lawsuits.
- Legal staff participated in various contractor and agency group/committees engaged in the development of the Bay Delta Conservation Plan. In *Solano County Water Agency v. Department of Water Resources*, staff coordinated litigation activities and assisted in preparation of legal briefs.
- Staff provided advice and assisted in the defense of a California Environmental Quality Act lawsuit filed by environmental groups challenging the Drought Water Bank. Staff negotiated and drafted agreements, the 2010 Delta Water Package and subsequent proposed legislation to implement or revise the package.
- Legal staff prepared and participated in pre-trial and trial proceedings in the Quantification Settlement Agreement cases.
- Legal staff worked with DWR in finalizing the EIR for the Monterey Amendment and coordinated with the state and other defendants on preliminary matters concerning two lawsuits filed to challenge the new EIR.
- Staff provided legal support in a variety of water supply and water quality issues relating to both Metropolitan and Native American water supply. Staff participated and/or monitored litigation in, *Navajo Nation v. The United States*, *Glen Canyon Trust v. U.S. Bureau of Reclamation*, *In Re Tronox Bankruptcy* and *Orange County Water District v. Northrop Grumman, et al.* and related cases.

- Legal staff provided support for water conservation, water transfer, Intentionally-Created Surplus Program, Inadvertent Overrun and Payback Policy, desalination, Water Supply Allocation Plan, Urban Water Management Plan, Integrated Resources Plan and groundwater and storage programs.

### Energy

- Legal staff represented Metropolitan's interests in the Hyatt-Thermalito lawsuit by preparing for and appearing in post-trial proceedings, and provided legal support in connection with the relicensing of the Oroville Dam, energy contracts, State Water Project power issues, and on electric reliability standards.
- Staff provided support for Metropolitan's initiatives for reduction of greenhouse gas emissions, California's Global Warming Solutions Act, and other state and federal initiatives.
- Legal staff participated or monitored Federal Energy Regulation Commission proceedings, assisted in Metropolitan's Energy Management Plan, and reviewed and commented on energy legislation.

### Communications

- Legal Department personnel assisted Information Technology staff on the implementation of the electronic discovery management system and responded to a number of Public Records Act requests and Subpoenas.
- Staff assisted with Federal Communications Commission licensing requirements for Metropolitan's communication systems and with communication site-related leases.

### Capital Projects

- Legal staff concluded all pending eminent domain actions for the Perris Valley Pipeline Project South Reach and negotiated settlement of potential claims on the North Reach.
- Legal staff provided support to the construction and regulatory activities related to the Diemer North Access Road Project, the San Diego Pipeline 6 Project and other capital project contracts.
- Staff provided support on management and close-out of construction contracts and surplus equipment sale of the Inland Feeder Project; and negotiated comprehensive settlement of two eminent domain actions against Campus Crusade for Christ.

### Operations

- Legal staff assisted and monitored water quality and air quality issues relevant to Metropolitan.
- Staff assisted and/or drafted agreements on service connections, relocations, real estate issues and annexations.
- Legal staff assisted Risk Management on claims and lawsuits.

### Workforce

- Metropolitan attorneys handled labor litigation, successfully negotiating settlements, and defended Metropolitan in PERB Unfair Labor Practice Charges, bargaining unit grievances and appeals and EEO claims.
- Staff provided assistance and advice to the Human Resources Group and management, on policies and classification/compensation studies.

Finance

- Staff provided legal assistance in conjunction with the issuance of numerous bonds; prepared official statements and remarketing statements and assisted with bond documentation; advised Finance staff on authorization of Special Variable Rate Water Revenue Bonds; assisted and advised with rates and charges, investments and taxation issues.

Administration

- Legal provided advice and reports to the board, the General Manager, External Affairs and other groups. Staff also reviewed contracts and continued to streamline processes.
- Legal provided advice and reports to the board, the General Manager, External Affairs and other groups. Staff also reviewed contracts and continued to streamline processes.
- Staff assisted in drafting and analyzing new laws enacted in 2009.

**Attachment 1 – General Counsel’s Annual Report on fiscal year 2009/10 Business Plan Accomplishments**

Ref# I63402713



*"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 Annual Report**

## **On Fiscal Year 2009/10 Business Plan**

### **Accomplishments**

July 1, 2009 to June 30, 2010

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## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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) and California Endangered Species Act (CESA)

Delta Smelt: Continued to provide legal assistance to outside counsel in the federal court lawsuit brought by Metropolitan challenging the 2008 delta smelt Biological Opinion (BiOp). (Consolidated Delta Smelt Cases) Helped coordinate Metropolitan's delta smelt BiOp litigation with other lawsuits challenging the delta smelt BiOp that were brought by other water contractors and parties, including securing scientific expertise for the litigation.

Salmon: Continued to provide legal assistance to outside counsel in the federal court lawsuit brought by Metropolitan challenging the 2009 salmon BiOp (Consolidated Salmon Cases). Helped coordinate Metropolitan's salmon BiOp litigation with other lawsuits challenging the salmon BiOp that were brought by other water contractors and parties, including in securing scientific expertise for the litigation.

Longfin: Continued to monitor and assist outside counsel in lawsuits brought by the State Water Contractors (SWC) challenging the CESA 2084 take regulation for longfin smelt and the CESA 2081 take permit for longfin smelt.

Splittail: Coordinated and provided legal assistance to state and federal water contractors who are monitoring and submitting comments in the ongoing proceeding on whether to list splittail as either endangered or threatened under the ESA.

Ocean Harvest BiOps: Provided legal assistance and analysis to state and federal water contractors who are monitoring and analyzing whether the BiOps on the impacts of ocean fishing on threatened and endangered salmon are adequate, and whether those BiOps utilize the same jeopardy standards and analysis that have been applied to Central Valley Project (CVP) and/or State Water Project (SWP) operations.

CESA Litigation: Continued to monitor litigation brought by the SWC challenging the consistency determination under CESA for Delta smelt and salmon, and CESA section 2081 permit for longfin smelt.

Other Stressors: Continued to gather data, 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.

Continued to monitor proceedings in *Watershed Enforcers v. Department of Water Resources*, now on appeal, which challenges the CESA authorization for operation of the SWP.

#### National Academy of Sciences/National Research Council:

Continued to participate, through a joint federal and state water contractor effort, in the National Research Council (NRC) proceeding that is reviewing the delta smelt and salmon BiOps, and evaluating the impacts of third-party stressors in the Bay-Delta. Helped arrange

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

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expert testimony that was presented to the NRC, and continue to assist in preparation of additional submittals to the NRC.

#### **Bay-Delta Conservation Plan (BDCP)**

Participated in various contractor and agency groups/committees engaged in the development of the BDCP and provided legal memoranda and assistance on a variety of topics under the ESA and CESA, the Natural Communities Conservation Planning Act, California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

Participated in SWC's legal committee on BDCP 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.

#### **Bay-Delta General**

Participated in SWC strategy discussions regarding Endangered Species Committee and National Academy of Sciences review of Bay-Delta ESA issues.

Provided legal assistance, negotiated and drafted language in successful 2010 Delta Water Package. Provided similar assistance for subsequent proposed legislation to implement or revise the package.

Provided legal assistance, negotiated and drafted agreements forming the State and Federal Contractors Water Agency.

Worked with the Department of Water Resources (DWR) in finalizing the Environmental Impact Report (EIR) for the Monterey Amendments to the SWP delivery contracts. Coordinated with the state and other defendant parties on preliminary matters concerning two new lawsuits filed in June 2010.

#### **State Water Resource Control Board Proceedings**

Worked with SWC to file complaints with SWRCB alleging illegal diversions by Delta diverters.

Worked with SWC and federal CVP contractors to provide comments and testimony to the State Water Quality Control Board (SWQCB) concerning flow criteria for the Bay-Delta ecosystem.

#### **Solano County Water Agency v. Department of Water Resources**

After successfully intervening in this lawsuit in support of DWR's administration of the SWC's shortage provisions, coordinated litigation activities among DWR and Metropolitan's co-parties and assisted in the preparation of legal briefs defending the SWP.

#### **Sacramento Regional County Sanitation District Plant Expansion**

Coordinated preparation of two technical submittals to the Central Valley Regional Water Quality Control Board concerning the Sacramento Regional Sanitation District's discharge permit.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Water Supply

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#### **2009 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, statement of issues, trial brief and other pleadings. Assisted in preparing for two-day bench trial conducted in January 2010. Participated in various pre and post trial case management and status conferences held by the Court. Assisted in preparation for bench trial.

#### **Yuba County Water Agency Transfer**

Participated and provided legal advice in the preparation of an Amendment No. 3, dealing with delivery of Yuba water to Metropolitan and other SWCs.

#### **Other Transfers and Exchanges**

Negotiated and drafted several water transfer agreements between SWC member buyers and Sacramento Valley sellers and associated agreements with DWR resulting in approximately 100,000 acre-feet of transfer water for Metropolitan in 2010.

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

### Colorado River

#### **Quantification Settlement Agreement (QSA) Litigation**

Prepared and responded to various pretrial motions, including various motions for summary adjudication aimed at limiting the issues for trial. Prepared and responded to extensive trial briefs. Prepared for and participated in 11-day bench trial conducted in November/December 2009, which resulted in an adverse ruling on the validity of the QSA. Prepared comments on court's tentative ruling. Attended various pre- and post-trial case management and status conferences held by the court. Assisted in preparing appeal of court's ruling and petition for writ of supersedeas to stay the ruling, which was granted by the Third District Court of Appeal.

Prepared answer to federal complaint filed by County of Imperial and Imperial County Air Pollution Control District alleging approval of QSA violated the Clean Air Act and NEPA. Participated in early neutral evaluation conference conducted by federal magistrate.

#### **Lower Colorado River Multi-Species Conservation Plan**

Provided legal advice related to management of the annual financial contributions by Metropolitan and other California agencies required 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.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Water Supply

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#### **Native American Water Supply Issues**

Provided legal support on issues relating to provision of water to the Pechanga Tribe, including research and negotiations regarding potential modification of Metropolitan's service area boundaries to include 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.

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 mediation regarding dispute between Metropolitan and the San Luis Rey regarding the cost of conserved water.

Continued to monitor the Navajo Nation litigation regarding the Navajo Nations challenge to the Interim Surplus Guidelines and lack of specific allocation of Colorado River water to tribal entities.

#### **Additional Water Supply**

Drafted agreement and provided legal advice related to Coachella Valley Water District's 4,000 acre-foot 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 Following 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 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.

#### **Yuma Desalting Plant**

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.

#### **Colorado River Authorities**

Joined with the Southern Nevada Water Authority (SNWA) and the Central Arizona Water Conservation District (CAWCD) to form the "Colorado River Authorities", an informal association to work with the State of Nevada and the Colorado River Commission of Nevada to respond to the bankruptcy filed by Tronox Worldwide



## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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

and the potential impact of the bankruptcy on the control and cleanup of perchlorate and other contaminants from Tronox's Henderson, Nevada facility that threaten the Colorado River.

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

Continued to participate with the group of intervenors including Basin States and water districts to support the federal government's defense of claims alleging continuing violation of the ESA, relative to the operation of the Glen Canyon Dam.

#### **Other Colorado River Supply related Issues**

Provided legal assistance in protecting existing Colorado River water supplies through negotiations on rules governing inadvertent overruns and Lake Mead storage, potential use of Colorado River water for new solar power plants, and removing or reducing other conflicting uses such as consumptive use on Yuma Island.

Provided comments and evidence regarding potential effects on the structural integrity of the CRA, water quality, and groundwater tables.

### Integrated Resources Plan

#### **Water Supply Allocation Plan (WSAP)**

After obtaining Central Basin Municipal Water District's dismissal of its litigation challenging the WSAP, reviewed a number of appeals under, and participated in discussions to revise, the WSAP. Provided legal advice on proposed WSAP revisions and implementation for a second year.

### Local/Regional Water Resources

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

Represented the District in the *OCWD v Northrop* matter in which Metropolitan is a cross-defendant. Propounded and responded to written discovery requests. Coordinated analysis of treatment protocols, costs, and historical sources of perchlorate.

#### **San Diego County Water Agency (SDCWA) Conveyance Agreement**

Developed and negotiated a wheeling agreement with SDCWA for transfer water SDCWA purchased in 2009 and a Conveyance Agreement with DWR facilitating movement of the water. The water was made available for use by SDCWA in 2009.

#### **Groundwater Recovery and Storage**

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, water recycling, and groundwater management.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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

Provided legal support for implementing conjunctive use groundwater storage contracts with member agencies.

#### **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 Regional Urban Water Management Plan (RUWMP). Reviewed and provided extensive comments on the draft RUWMP.

#### **Integrated Resources Plan (IRP)**

Provided legal support for development of an updated IRP. Participated in board workshops and provided legal assistance for the planning process.

#### **Conservation Strategies and Programs**

Provided legal assistance in Audit Department's review of the Conservation Credits Program (CCP). Assisted in modifying existing rebate programs and contracts to facilitate program changes instituted by the Board of Directors for fiscal years 2009/10 and 2010/11.

Provided legal advice and drafting assistance related to numerous contracts with member agencies under Metropolitan's CCP and other local resources incentives programs.

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

#### **Governor's Statewide Water Reduction Goals**

Assisted in negotiation and drafting of Senate Bill X7-7. This new law requires urban retail water suppliers statewide to undertake new reporting requirements and conservation measures to reduce per capita water use 20% by the year 2020. Assisted in developing strategies for regional compliance with member agencies.

#### **Seawater Desalination**

Assisted in negotiations, drafting, and Board consideration of agreement to provide up to \$350 million in incentives for desalinated seawater produced by the Poseidon-Carlsbad Desalination Project.

Continued analysis of CEQA-related issues associated with seawater desalination generally, including analysis of new federal appeals court opinion and proposed regulations from the SWRCB.

Supported activities of Member Agency Seawater Desalination Program group.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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. 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 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 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, 2009. Assisted in preparing a proposed Statement of Decision, which was approved by the court with no changes on October 16, 2009. Assisted in preparing a motion for judgment on the pleadings (MJOP), which requested that all remaining causes of action asserted by Plaintiffs in two related lawsuits be dismissed. The MJOP was granted on April 21, 2010, and a proposed judgment dismissing the original case in its entirety was entered by the court on May 3, 2010. Assisted in preparing a memorandum seeking reimbursement for certain court costs and other fees. Assisted in preparing opposition to motion for new trial filed by Plaintiffs. Participated in various pre- and post-trial case management and status conferences held by the court.

##### Oroville Reservoir

Provided legal support in connection with the ongoing relicensing process for the hydroelectric facilities at Oroville Dam. Assisted 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 DWR in support of the new license. Assisted in defending a complaint filed by Butte County with the Federal Energy

Regulatory Commission (FERC), in which it seeks economic damages for alleged violations of the current license. The complaint was dismissed by FERC in late 2009 and Butte County subsequently filed an appeal with the Ninth Circuit. Participated in mandatory settlement conferences held by federal mediator. Provided legal counseling and support in a connection with DWR's applications for various regulatory permits and approvals needed for new license.

##### Energy Contracts

Provided legal assistance in negotiating necessary contracts regarding energy supply for the Colorado River Aqueduct, including amendments to Metropolitan's energy contract with Southern California Edison.

##### State Water Project Power Issues

Provided legal support to ensure that SWP energy 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.

Provided legal support to the SWC Energy Committee in reviewing SWP's development of an integrated energy resource plan, including development of several large energy projects.

##### 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 and for an associated on-site audit.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Energy

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

#### 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.

Provided legal support on preparing comments on the development of regulations pursuant to the NEPA and CEQA requiring analysis of potential climate change impacts.

Provided legal support on comments provided to the U.S. President's Council on Environmental Quality regarding analysis of climate change in federal water resource planning.

#### Electricity Operations

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

Provided legal assistance regarding operation and maintenance of Metropolitan Colorado River transmission system, including coordination of expansion of Southern California Edison's facilities in the areas of the Hinds pumping plant and analysis of legal obligations regarding requests for interconnection to Metropolitan's system.

Intervened in FERC proceeding relative to final licensing application for proposed pump-back energy project at abandoned mine pits near Eagle Mountain adjacent to the Colorado River Aqueduct.

#### 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. Provided legal support for renewable energy projects and renewable energy credit transactions.

#### Energy Legislation

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.

Provided legal support to External Affairs and analyzed numerous State and federal energy-related bills involving energy efficiency, state and federal grants, renewable electricity requirements, net energy metering, and greenhouse gas regulation.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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

Continued to work with Information Technology staff on implementation of the electronic discovery management system. This system will enable Metropolitan's legal and IT staff to respond to litigation and Public Records Act requests effectively and efficiently. Legal staff also is working with Corporate Resources staff to develop a comprehensive document management process for the entire organization.

##### Board Communications

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

Provided continuing legal advice to the Board and management regarding compliance with the Political Reform Act.

##### Public Records Act Requests and Subpoenas

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

##### Telecommunications

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

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

Concluded ground lease on one site; currently negotiating second site lease.

##### External Affairs

Assisted in obtaining a registered trademark for Metropolitan for [bewaterwise.com](http://bewaterwise.com).

Provided legal advice regarding changes to public communication strategies, disclosure requirements, and terms and conditions of revised consumer rebates program.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Capital Projects

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

#### Activities

##### Perris Valley Pipeline

Concluded all pending eminent domain actions to acquire easement rights for construction of the South Reach using in-house counsel. 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 and close out of the construction contract and contracting to sell surplus equipment.

##### Diemer North Access Road Project

Provided legal support for initial regulatory and construction activities, including negotiation of several federal and state permits.

##### 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 Project 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.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Operations

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

#### Activities

##### Water Quality Issues

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

Provided legal advice in connection with Emerging Constituents Task Force established by Santa Ana Regional Water Quality Control Board to study approaches for potential new regulation of trace chemicals in surface and groundwater supplies.

Assisted water quality staff in stakeholder advisory process regarding the proposed remediation plan for Chromium-6 groundwater contamination adjacent to Colorado River at PG&E Topock compressor station site.

##### 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

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.

##### 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.

##### 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.

Supported the expanded work efforts of the Real Property Development and Asset Management Group (RPDAM) as the group reorganized and refocused its efforts. Support included review of all leases and other real property related documents to assure compliance with Metropolitan's policies and procedures and to assure that Metropolitan's interests are protected.

Participated in negotiations and drafted lease to use part of the DVL Visitors Center as part of Charter School proposed by the Western Science Center.

Worked with RPDAM staff in developing several initiatives for use of Metropolitan's real property at Diamond Valley Lake.

Completed closure of the Lake Mathews airfield; an airstrip no longer used by WSO that management considered a potential safety hazard for the facility.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Operations

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

Assisted RPDAM staff in completing internal procedures necessary prior to Metropolitan Board approval and statutory requirements prior to sale of surplus residential property located in Yorba Linda, CA.

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

#### 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. 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. In-house counsel also completed the acquisition of the right-of-way for the South Reach of the Perris Valley Pipeline with the settlement of the last eminent domain case pending in Riverside County Superior Court.

#### Annexations

Supported annexation process and development of related water supply policies, including work to update required water conservation policies.

#### Risk Management and Claims

Provided legal assistance on risk management and insurance-related matters, including Metropolitan's claims and Workers' Compensation programs.

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.

Advised Risk Management Unit regarding administrative claims for money damages against Metropolitan and related court litigation.

Obtained summary judgment dismissing Metropolitan from a suit for damages arising from a motorcycle accident (*Barrows v. Southern California Gas Co., et al.*)

#### Workplace Health and Safety Issues

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



## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### Workforce

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

#### Activities

##### Labor Agreements

Provided legal assistance supporting the MOU negotiations with Metropolitan's four bargaining units, which resulted in MOUs with three bargaining units for a period of eighteen months. Provided legal assistance in interpreting and applying the MOUs with a focus on ensuring proper, uniform, and equitable application.

##### *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 to date of approximately \$4.6 million.

##### Support of Human Resources and Management

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 Operating Policies and employee-related Administrative Code sections, with a focus on ensuring proper, uniform, and equitable application.

Provided investigation oversight for EEO claims, security matters, and misconduct reports, providing recommendations for remedial actions where appropriate. Created "avoiding legal risks" primers for

managers and presented these at the Management Forum, New Manager Orientation trainings, and manager group training.

A working committee consisting of the General Counsel, Assistant General Counsels, 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 System 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

Defended Metropolitan in several employment lawsuits, handling the cases entirely in-house:

*Ellsworth v. Metropolitan, et al.* (alleging race, national origin, ancestry, and age discrimination and harassment; disability discrimination, failure to accommodate, and failure to engage in the interactive process; retaliation for opposing discrimination and harassment; failure to prevent harassment, discrimination, and retaliation; defamation; and wrongful failure to promote in violation of public policy). Have litigated the case since October 2009, representing Metropolitan and four employee defendants. Successfully demurred to the wrongful failure to promote claim which was dismissed. Thousands of documents have been produced, with further production to occur, and the parties are engaged in depositions and other discovery. The case is set for trial in February 2011.

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*Kitos v. Metropolitan*, et al. (alleging wrongful demotion, wrongful demotion/retaliation in violation of public policy, age discrimination, and intentional infliction of emotional distress). The lawsuit was served in June 2010 and Metropolitan's response will be filed in July 2010.

*Minor v. Metropolitan* (alleging retaliation for complaining about gender and race discrimination and sexual harassment, and for complaining about retaliation). Litigated the case from June to October 2009, when plaintiff dismissed the case without prejudice. The case was refiled and has been litigated since April 2010. The parties have engaged in discovery. A trial date has not been set.

*Robinson v. Metropolitan* (petitioning for writ of mandate as to a hearing officer's decision sustaining termination, alleging violation of Skelly rights, and requesting declaratory relief). The lawsuit was served in May 2010 and Metropolitan's response will be filed in June 2010.

*Smith v. Metropolitan*, 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 case from March 2008 to May 2009, representing Metropolitan and five employee defendants. Successfully removed the case to federal court. Prepared motions to dismiss and strike, resulting in plaintiff voluntarily dismissing the challenged claims. Engaged in numerous depositions, other discovery, and discovery motions before the court, and obtained a sanctions order against plaintiff. Held a settlement conference and, pending finalization of a settlement, plaintiff caused the case to be dismissed without prejudice.

### **AFSCME Local 1902 v. Metropolitan**

AFSCME Local 1902 filed a federal district court lawsuit seeking injunctive and declaratory relief to prevent the disclosure of certain e-mail records pursuant to a request made under California's Public Records Act (CPRA). The records sought included the e-mail records of two District employees who represented Local 1902 during 2008. The Legal Department defended Metropolitan's interest in the lawsuit, which was set for trial on August 31, 2010. On February 23, 2010, AFSCME dismissed the lawsuit.

### **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 ten PERB matters that have been active during the past twelve months, one decision in Metropolitan's favor after a formal hearing has become final, two PERB charges have been dismissed based on objections raised by the Legal Department, three PERB charges have been withdrawn by the filing bargaining unit based on objections raised by the Legal Department, one PERB charge has been settled with no admission or finding of wrongdoing on Metropolitan's part, one PERB charge is being held in abeyance while the parties continue to engage in settlement discussions, one PERB charge is set for a three-day hearing in July 2010, and one PERB charge is being processed by PERB. The Legal Department will continue to defend Metropolitan's interests in the three remaining, active charges.

### **Bargaining Unit Grievances and Appeals**

Defended Metropolitan's interests in hearing officer appeal requests lodged by the bargaining units. The Legal Department processed hearing officer appeals involving eighteen grievances and six

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disciplinary actions during the past twelve months. We are awaiting decisions from hearing officers on six grievances that have been consolidated into two hearings, all of which were handled in-house. We have received ten hearing officer decisions on appeals involving grievances and disciplinary actions, and the District prevailed in seven of those matters. All but one of those appeals were handled in-house. Two hearing officer decisions were received based on jurisdictional objections raised by the Metropolitan, and Metropolitan's jurisdictional objections were overruled. The Legal Department negotiated settlements of six appeals involving nine grievances and three 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 39 to 12 appeals.

#### **EEO Claims**

With the EEO Office, 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.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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

##### Bonds

Prepared redemption and disclosure documents (Appendix A) 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.
- \$128,005,000 Special Variable Rate Water Revenue Refunding Bonds, 2010 Series A, Metropolitan's first issue of self-liquidity bonds, replacing variable rate bonds supported by a Dexia Credit Local standby bond purchase agreement

Prepared remarketing statement and assisted with documentation for the first remarketing of Metropolitan's Water Revenue Refunding Bonds, 2009 Series A-2 and 2009 Series A-1. 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.

Provided legal advice on authorization of Special Variable Rate Water Revenue Bonds, to be supported by bank liquidity facilities or Metropolitan's self-liquidity, amendment and renewal of financing instruments, novation of interest rate swap agreements and other transactions.

##### Rates and Charges

Researched and advised on adoption of two-year budget and rates.

##### Investments

Monitored Metropolitan's claim for the payment of corporate notes issued by Lehman Brothers Holdings, Inc. in the Lehman bankruptcy proceedings. Assisted with changes to the Statement of Investment Policy.

##### Taxation

Provided legal review, research and advice on issues related to taxation, including revisions to Metropolitan's administration of its Qualified Transportation Fringe Benefit Program.

## General Counsel's Annual Report on Fiscal Year 2009/10 Business Plan Accomplishments

### 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. Worked with the Ethics Officer to customize sexual harassment prevention training for the Board.

#### Legislation

Assisted in drafting and analysis of new laws enacted in 2009. Such legislation includes statewide mandatory conservation retrofits during real estate transactions, local government loans for residential conservation upgrades, and prohibition against homeowners' association bylaws that conflict with local water conservation ordinances.

Provided legal advice on enacted Delta Legislation, including approval of a strategy for a "Delta Fix" and a bill to achieve 20% water use reduction by 2020. Provided 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.

#### 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.

Litigated several cases exclusively using staff counsel, including *Metropolitan v. XO Communications*, *Metropolitan v. IEUA*, *Bisharat v. Kostelecky*, *Ramirez v. Charbonneau*, *Eastridge v. Metropolitan*, *Chavez, et al. v. Metropolitan*, *Ellsworth v. Metropolitan, et al.*, *Minor v. Metropolitan*, *Robinson v. Metropolitan*, *Smith v. Metropolitan, et al.*, and *AFSCME Local 1902 v. Metropolitan*.

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.

#### Contracting Issues

Provided legal review on procurement and professional services contracting issues, including streamlining of contract review

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procedures, revisions to Metropolitan's General Conditions, increased coordination with contract services and risk management staff and review of contract administrator training materials.

### Educational Programs

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

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.