



- Legal and Claims Committee

7/12/2011 Committee Meeting

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## Subject

General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

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## Description

The attached General Counsel's Annual Report on fiscal year 2010/11 Business Plan Accomplishments provides detailed information regarding the Legal Department's activities from July 1, 2010 through June 30, 2011. Some of the more significant activities that contributed to achieving the objectives set forth in the General Counsel's Business Plan are reflected below:

### Water Supply

- Legal staff provided extensive legal assistance regarding implementation of the 2009 Delta Water Package by the California Legislature, including development of the Delta Stewardship Council's Delta Plan.
- Legal staff participated in negotiation and mediation of a dispute with the San Luis Rey Indian Water Authority regarding price of Colorado River Water delivered to Metropolitan.
- The Legal Department continued to provide legal assistance in a number of Bay-Delta Endangered Species Act cases.
- Legal staff continued to participate in negotiations relating to the delivery of unused water to the Salton Sea by Imperial Irrigation District (IID).
- Legal staff participated in the continuing development of the Bay Delta Conservation Plan.
- Legal staff coordinated a multi-water agency effort regarding the Sacramento Regional County Sanitation District's discharge to the Sacramento River, securing significantly more stringent discharge permit limits.
- Legal staff continued to provide legal assistance in and organize other State Water Contractor participation in *Solano Water Agency v. Department of Water Resources* to protect Metropolitan's State Water Project (SWP) water supply.
- Legal staff continued to assist in the development and implementation of water transfer, exchange and storage programs.

### Finance

- Legal staff provided 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.
- Legal staff continued to participate in the defense of Metropolitan's rate structure in *San Diego County Water Authority v. Metropolitan Water District*.

**Operations**

- Legal staff continued to coordinate with Arizona and Nevada agencies on strategies for continued perchlorate remediation in Tronox bankruptcy proceeding.

**Capital Projects and Information Technology**

- Legal staff concluded all pending eminent domain actions for the Perris Valley Pipeline Project South Reach and represented Metropolitan in litigation matters filed by the Perris Valley Pipeline North Reach contractor and an adjacent property owner.
- 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.
- Legal Department personnel assisted Information Technology staff on the continued implementation of the electronic discovery management system.

**Real Property Matters**

- Legal staff provided support to Real Property Development and Asset Management Group (RPDAM) on third party property rights, leases and the sale of surplus property.

**District Governance**

- Legal staff provided advice and reports to the Board, the General Manager, External Affairs and other groups.

**Energy**

- Legal staff participated in the litigation and settlement discussions associated with the Federal Energy Regulatory Commission (FERC) transmission rate filings of Southern California Edison and Pacific Gas & Electric. Metropolitan's protests were instrumental in FERC's decision to suspend these rates for three months, and our participation in the settlement process helped facilitate a negotiated agreement in both proceedings. The final result was a lowering of Metropolitan's SWP power costs by several millions of dollars per year.
- Legal staff continues to be actively involved in drafting comments and presenting oral testimony to the California Air Resources Board (ARB), on behalf of both Metropolitan and the State Water Contractors, regarding the proposed Renewable Electricity Standards (RES) and cap-and-trade regulations. Neither Metropolitan nor the SWP will be directly subject to the RES, and Metropolitan staff has opened a dialogue with ARB staff regarding an allocation of free credits to assist with compliance with regulations and reduction of total energy expenditures.
- Legal staff assisted and advised Metropolitan staff in the preparation of the mandatory electric reliability standard audit. The audit concluded with no findings of non-compliance, the most favorable result possible.
- Legal staff assisted operations staff in the adoption of the Energy Management Plan, as well as numerous associated renewable energy projects, including the Weymouth solar project and Real Property's leasing of desert properties to commercial generators.

**Workforce**

- Legal staff defended Metropolitan's interests in several employment litigation matters, including the court's granting of a summary judgment motion in one case and obtaining a dismissal based on the trial court's granting of Metropolitan's demurrer and motion to strike on another matter.
- Legal staff provided legal assistance to complete the implementation of the *Cargill* class action settlement.
- Legal staff defended Metropolitan's interests in five PERB matters that alleged unfair labor practices, including the dismissal of two charges based on Metropolitan's position statement, a withdrawal of one charge based on the objections raised by the Legal Department and is preparing for the post hearing briefing after an administrative trial of another charge.
- Legal staff defended Metropolitan in hearing officer appeals lodged by bargaining units, significantly reducing the number of active cases. Metropolitan received favorable decisions in one case and settled two cases.
- Legal staff provided investigation oversight for EEO claims, security matters, and misconduct, providing recommendations for remedial actions where appropriate.
- Legal staff updated the Administrative Code chapter on employee relations by incorporating model language and engaging in the meet and consult process with the bargaining units.
- Legal staff provided training for Metropolitan managers on employment "Litigation Landmines."

**Administration**

- Legal staff responded to numerous Public Records Act requests and subpoenas.
- Managed legal costs related to several litigation matters, including employment cases by using in-house counsel through summary judgment and retaining a significant role for trial preparation and trial.
- Managed administrative costs by increasing use of technology in lieu of travel related to business and training.
- Staff continued to review contracts and streamline processes in an ongoing effort to maximize efficiency.

**Attachment 1 – General Counsel's Annual Report on fiscal year 2010/11 Business Plan Accomplishments**



*"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 2010/11 Business Plan**

### **Accomplishments**

**July 1, 2010 to June 30, 2011**

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## General Counsel's Annual Report on Fiscal Year 2010/11 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 federal court litigation that invalidated 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. Helped secure key scientific expertise and assisted in post-judgment interim remedies proceedings in that litigation. Participated, along with State Water Contractors (SWC) and federal water contractors in National Academy of Sciences (NAS) proceedings to review Endangered Species BiOps for Bay-Delta, "other Stressors" issues and Bay Delta Conservation Plan Effects Analysis. Currently collaborating with other contractors on analyses and comments to submit in the federal agency consultation for the new Delta smelt BiOp.

**Salmon:** Continued to provide 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. Helped secure scientific expertise, assisted in preliminary injunction proceedings in that litigation.

**Longfin:** Continued to monitor and assist outside counsel in lawsuits brought by the SWC challenging the CESA 2081 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 and assist outside counsel in lawsuits brought by the SWC challenging the CESA consistency determinations issued for Delta smelt and salmon which are based upon the Delta smelt and salmon BiOps.

**Other Stressors:** Continued to 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.

#### National Academy of Sciences/National Research Council (NRC)

Continued to participate, through a joint federal and state water contractor effort, in the 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 expert testimony that was

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presented to the NRC, and continue to assist in preparation of additional submittals to the NRC.

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

Provided legal advice on a variety of topics regarding the development of the BDCP and associated environmental documentation. Drafted a variety of legal memoranda and assistance on topics involving the state and federal ESA, National Environmental Policy Act (NEPA), Natural Communities Conservation Planning Act (NCCPA), and the California Environmental Quality Act (CEQA). Promoted Metropolitan's legal position in meetings with state and federal agencies, and environmental representatives. Reviewed the BDCP effects analysis and coordinated technical/legal comments on behalf of joint state and federal water contractors.

Provided legal assistance to the State in its defense of the RD 999/Central Delta Water Agency litigation challenging the CEQA documentation for the in-Delta drilling and land surveys.

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

Provided legal assistance, and negotiated and drafted language for proposed legislation to implement or revise the successful Delta Water Package. Drafted comments submitted by Metropolitan and contributed to comments by the SWC and CVP contractors regarding various proposed rules, regulations and reports by the Delta Stewardship Council regarding implementation of the package.

Provided legal assistance regarding the Delta Stewardship Council's activities, including the Council's process to develop the Delta Plan.

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.

Provided legal assistance and comments on Army Corps/Port of Stockton plan and joint CEQA/NEPA document proposing to dredge Sacramento Deep Water Ship Channel, which is prime habitat for Delta smelt, as well as other ESA-listed species.

Provided legal assistance in the development of SWC comments on methyl mercury TMDL.

#### **State Water Resources Control Board (SWRCB) 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 SWQCB concerning flow criteria for the Bay-Delta ecosystem.

Worked with SWC and CVP contractors to provide comments and testimony to the SWRCB and participated in hearings involving Delta salinity objectives and San Joaquin River flow requirements.

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

Coordinated preparation of joint water agency comments on the tentative discharge permit for the Sacramento Regional County Sanitation District and presented testimony before the Central Valley Regional Water Quality Control Board, resulting in new strict discharge limits that will require nitrification/de-nitrification facilities and tertiary filtration for this major discharger to the Bay-Delta. Following appeal to the SWRCB, coordinated preparation of the water agencies' response to the appeal petition.

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### Water Supply

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#### **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.

#### **2009 Drought Water Bank**

Provided legal advice related to the 2009 Drought Water Bank. Assisted in defense of a CEQA lawsuit filed by environmental groups challenging the water bank. Assisted in preparing an appeal following an adverse ruling at trial. Assisted in negotiating a settlement with plaintiffs on terms that were extremely favorable to Metropolitan and other participants in the water bank.

#### **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.

#### **Monterey II Cases**

Participated with the State and other contractors in defending new lawsuits brought in 2010 that challenge the Monterey Amendments to the State Water Project contracts. Prepared legal briefs, participated in court hearings, and assisted the State in assembling the administrative record for these cases.

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

Assisted staff in negotiating various water transfers with Conaway Ranch, Westlands Water District and others. Assisted in preparation and implementation of transfer, exchange and storage agreements and related documents.

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.

Negotiated and drafted water transfer and exchange agreements between Metropolitan and CVP export contractors resulting in approximately 120,000 acre-feet of water for Metropolitan in 2010, of which approximately 65,000 will be returned in 2011.

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

#### **Water Supply Allocation Plan (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 another year. Participated in member agency meetings to review the WSAP.

Provided legal assistance on revising the conservation program operations, agreements and implications of groundwater storage programs and water transfer proposals.

#### **Municipal Water District of Orange County (MWDOC)/Irvine Ranch Water District (IRWD) Coordinated Operating, Exchange and Delivery Agreement**

Negotiated and drafted an agreement with MWDOC and IRWD facilitating IRWD's procurement, storage and delivery of water for its service area while increasing Metropolitan's storage opportunities and operational flexibility.

## General Counsel's Annual Report on Fiscal Year 2010/11 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.

#### 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.

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

Assisted in preparing an appeal of the trial court's decision holding the QSA and 11 related agreements invalid. Assisted in drafting opening and responsive appellate briefs and various related filings in the court of appeal. Participated in post-trial case management conferences held by the trial court.

Drafted motion to intervene in the federal lawsuit filed by the County of Imperial and Imperial County Air Pollution Control District alleging that approval of the QSA violated the Clean Air Act and NEPA. Participated in discussions with plaintiffs regarding the scope of the administrative record and a proposed briefing schedule. Engaged in strategy discussions with the federal defendants. Participated in status conferences conducted by federal magistrate.

Participated in discussions organized by the Bureau of Reclamation regarding Imperial Irrigation District's delivery of Colorado River water to the Salton Sea to avoid the cost to conserving water to meet QSA mitigation obligations.

Participated in meetings with Imperial Irrigation District, Coachella Valley Water District and San Diego County Water Authority to develop collective strategy for obtaining funding of QSA-related mitigation costs.

##### 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.

##### Native American Water Supply Issues

Continued to support real property issues relating to provision of water to the Pechanga Tribe.

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

Participated in negotiations on and mediation of 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.

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 request to deliver 10,000 acre-feet of Colorado River water at Whitewater pursuant to the 2003 agreement for the exchange of SWP water for Colorado River water.

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



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### Water Supply

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conservation projects within the Palo Verde Irrigation District and Bard Irrigation District.

#### **Intentionally-Created Surplus (ICS) Program**

Provided legal support for consultations with the Bureau of Reclamation regarding development of procedures for implementation and accounting for creation and recovery of ICS.

#### **Inadvertent Overrun and Payback Policy**

Provided legal assistance in protecting existing Colorado River water supplies through negotiations on inadvertent overrun policies.

#### **Colorado River Authorities**

Continued working as part of the "Colorado River Authorities," to respond to the bankruptcy filed by Tronox Worldwide 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. Work resulted in the provision of an additional \$80 million of cash and assets to the Henderson Environmental Trust.

Further negotiated a memorandum of understanding among those agencies to coordinate future efforts on any water quality issues that may affect Colorado River water supplies.

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

Participated in federal court litigation regarding federal government's compliance with ESA and NEPA in determining release patterns for Glen Canyon Dam on the Colorado River. Trial court issued summary judgment ruling in favor of the federal government and intervenor states and water districts. This matter is currently on appeal.

#### **Emergency Storage Agreement with Mexico**

Assisted in negotiations with the U.S. Bureau of Reclamation, the International Boundary and Water Commission, and the Colorado River Basin states for adoption of a treaty agreement, Minute 318, to allow Mexico to store water in Lake Mead due to Mexico's inability to use all of its water because of damage from the April 2010 Mexicali earthquake. Working with staff to negotiate a long term storage and shortage agreement with Mexico to develop a long range plan for Lake Mead storage by Mexico and sharing of any storage impacts with Mexico.

#### **Minute 318 to 1944 Mexican Treaty**

Participated in negotiations with the federal government on terms for an agreement with Mexico for storage of water in U.S. reservoirs for future delivery in response to the April 2010 Mexicali earthquake.

#### **Yuma Island**

Provided legal assistance and participated in discussions with the Bureau of Reclamation, Arizona State Lands Department, and farmers on the Yuma Island property over dispute on accounting for Colorado River water used on the land.

#### **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.

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### Water Supply

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### Integrated Resources Plan

#### Integrated Resources Plan (IRP)

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

### Local/Regional Water Resources

#### 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.

Provided advice regarding administration of several existing conjunctive use agreements with member agencies for groundwater storage of imported supplies.

Negotiated termination and settlement of Metropolitan-Calleguas Groundwater Storage Conjunctive Use Program for the North Las Posas Groundwater Basin.

Negotiated dismissal of Metropolitan and certain Metropolitan member agencies from CEQA litigation arising out of Central Basin groundwater issues.

Negotiation agreement for new agreement consolidating and adding to the Chino Hills Desalting Program.

### 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.

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 adopting a revised 2010/2011 Regional Urban Water Management Plan (RUWMP). Reviewed and provided extensive comments on the draft RUWMP.

### 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 drafting the Long-Term Conservation Plan and revising the conservation program operations and agreements.

## General Counsel's Annual Report on Fiscal Year 2010/11 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.

#### **Groundwater Management**

Assist staff in development of new policies for storage of imported water in groundwater basins, including implications for WSAP and treatment under existing rate structure.

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

Assisted in the implementation of Senate Bill X7-7, including the development of new water conservation regulations. This new law requires urban retail water suppliers statewide to undertake new reporting requirements and conservation measures to reduce per capita water use 20 percent 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, including planning for comprehensive study of issues arising from integration of desalinated seawater into Metropolitan's distribution system. Assisted in briefings for the Board's Special Committee on Desalination and Recycling.

## General Counsel's Annual Report on Fiscal Year 2010/11 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. Assisted in preparing oppositions to plaintiffs' motion for a new trial and motion to tax or strike our costs. Participated in hearings on those motions and in other post-trial conferences held by the court. Assisted in drafting and reviewing notice of cross-appeal, mediation statement, certificate of interested parties and related appellate court filings. Assisted in preparing opposition to plaintiffs' motion to dismiss our cross-appeal. Assisted in preparation of record for cross-appeal. Assisted in drafting opening, responsive and reply briefs filed in appellate 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 EIR 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. Assisted in preparing extensive comments on the draft 401 certification issued for the project by SWRCB staff. Participated in negotiations with SWRCB staff in an effort to secure changes to the draft 401 certification. Participated in SWRCB hearings on draft 401 certification. Provided legal counseling and support in connection with DWR's applications for other 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. Participated in SWC Energy and Legal Committees and coordinated with SWP and SWC staffers on issues impacting SWP costs, including cap-and-trade regulations, renewable energy procurement, power contract negotiations, and settlement of pending litigation.

##### 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. Provided legal support, assistance and advice in preparation for a May 2011 mandatory electric reliability standard audit. The audit concluded with no findings of non-compliance, the most favorable result possible. The next comparable audit will be five to six years from the May 2011 audit date.

##### 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.

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### Energy

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

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, projects impacting the Colorado River Aqueduct Transmission System, cap-and-trade regulations, and other legal matters affecting the electricity operations and costs of Metropolitan and SWP. Updated the Board on important electricity-related regulatory proceedings.

#### **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 power contract drafting, negotiation, and implementation.

#### **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 five percent 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 2010/11 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 is also working with Corporate Resources staff to develop a comprehensive document management process for the entire organization.

##### 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 2010/11 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

Provided legal support in management of the construction contract, change orders, and notices of claim. Worked with property owners to extend construction easements. Worked with outside counsel to represent Metropolitan in *Foxfire v. Rasic* litigation matter relating to construction of PVP-North. This matter was settled with approval of the Board in September 2010.

Assisted outside counsel in defense of inverse condemnation lawsuit filed by owner of property adjacent to construction: *Village Retail LLC v. Metropolitan Water District, et al.* Summary judgment granted in Metropolitan's favor at the trial court for all land-related issues. Separate settlement of issues relating to subsurface water.

##### Diamond Valley Lake

Provided legal support on issues related to DVL Visitors Center, including work with Real Property Development and Asset Management Group (RPDAM) 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. Completed transfer of land for widening of Winchester Road fronting on the west side of the project. Provided legal advice regarding groundwater mitigation obligations to surrounding landowners. Worked with Real Property to lease the former Visitor's Center to the California Building Performance Contractors Association for Green Home Energy and Energy Star workshops and training.

##### Inland Feeder Project

Provided legal support on post construction issues and coordination with National Forest staff regarding continued monitoring of potential resource impacts as a result of the construction.

##### Diemer North Access Road Project

Provided legal support for ongoing regulatory and construction activities, including negotiation of compliance with 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.

##### Two-Way Radio System Upgrade

Provided legal support for commercial acquisition of three clear-channel FCC licenses for service-area-wide integrated and trunked radio system. Provided legal oversight of multiple applications to FCC for a package of new shared-frequency licenses and public safety frequencies for upgraded radio system.

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### District Governance

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 and the Political Reform Act

#### Activities

##### Legislation

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

Provided legal assistance drafting legislation to extend the sunset date for laws protecting public water supply agencies from liability for delivery of water that may be infested with quagga mussels.

Assisted in drafting and analysis of new laws enacted in 2011. Such legislation includes, numerous bills on energy policies for public agencies, public employment reform, Bay-Delta reforms and bills affecting the development of Delta conveyance improvements, as well as the creation of a position for a water conservation expert on the California Building Commission.

##### 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.

Advised the Blue Ribbon Committee on Brown Act compliance and committee procedures.

Advised the Board and staff on the Metropolitan Water District Act, Brown Act and Political Reform Act matters.

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.



## General Counsel's Annual Report on Fiscal Year 2010/11 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 stormwater 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 Pacific Gas & Electric's Topock compressor station site.

Monitored activities of emerging constituents' workgroup regarding detection of trace constituents in water supply.

Provided legal assistance on analysis and comments on Army Corps of Engineers Clean Water Act (CWA) general permit and draft federal and state CWA policies regulating wetlands and other waters subject to CWA jurisdiction.

##### *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.

##### 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.

##### 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.

##### Workplace Health and Safety Issues

Provided legal advice to Workplace Health and Safety staff as they work to assure that all Metropolitan complies with all workplace health and safety requirements.

##### Environmental Review and Compliance

Provide legal review and support for environmental analysis and decisions made to support District operations, including review of

**General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments**

**Operations**

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

environmental impact studies and other legally-required environmental analysis and documentation. Assist in obtaining necessary environmental permits and approvals for District projects. Provide legal support for the development of comments on the potential environmental impacts from third-party projects that may impact District property or operations.

## General Counsel's Annual Report on Fiscal Year 2010/11 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 a MOU with one of the bargaining units for a period of five years. Provided legal assistance in interpreting and applying the MOUs with a focus on ensuring proper, uniform, and equitable application.

##### Cargill v. Metropolitan

*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. The settlement resulted in 2,058 claims for PERS enrollment and benefits. Recently, we completed processing those claims. Through the implementation process, we were able to reduce the number of eligible claims from 2,058 to 1,433, resulting in a savings to date of approximately \$4.6 million. All claims have been processed and evaluated, and all eligibility disputes have been resolved.

##### 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, 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.

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

Conducted four training sessions entitled "Avoiding Litigation Landmines" prepared by the Legal Department and presented to existing and new Metropolitan managers across the District.

A working committee consisting of the General Counsel, Assistants 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 System Operations meets regularly to discuss employee relations matters and to limit the number of Public Employment Relations Board (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.

At the request of Human Resources, the Legal Department updated *Division VI, Chapter 1, "Employee Relations,"* of the *Metropolitan Water District Administrative Code*, and obtained Board approval for the changes.

##### Litigation

Legal staff represented Metropolitan in several employment lawsuits; outside counsel was obtained for the *Ellsworth* and *Minor* cases in November 2010:

*Ellsworth v. Metropolitan, et al.* (alleging race, national origin, ancestry, age, and disability discrimination and harassment; failure to accommodate; failure to engage in the interactive process; retaliation

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### Workforce

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

for opposing discrimination and harassment; failure to prevent harassment, discrimination, and retaliation; defamation; and wrongful failure to promote in violation of public policy). Litigated the case since October 2009, representing Metropolitan and four employee defendants. Successfully demurred to the wrongful failure to promote claim and successfully moved for summary adjudication of the defamation claim, both of which were dismissed. Exchanged and reviewed over 20,000 documents, took and defended 16 days of depositions, conducted mediation, and filed several pre-trial motions. Resolved the case before the March 2011 jury trial.

*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 re-filed and has been litigated since April 2010. Exchanged and reviewed nearly 20,000 documents, took 14 days of depositions and defended one, conducted mediation, and filed several pre-trial motions. On June 14, 2011, the court granted Metropolitan's motion for summary judgment.

*Kitos v. Metropolitan, et al.* (alleging wrongful demotion, wrongful demotion/retaliation in violation of public policy, age discrimination, and intentional infliction of emotional distress). After successfully filing demurrers to the original and first amended complaints, Metropolitan filed a demurrer to the second amended complaint, which is scheduled for hearing on August 4, 2010. The court has not yet set a trial date. This matter is being handled by the Legal Department.

*Robinson v. Metropolitan* (petitioning for writ of mandate and asserting a complaint for damages as to a hearing officer's decision sustaining termination, alleging violation of Skelly rights, and requesting declaratory relief). The petition for writ/complaint was served in May 2010 and Metropolitan filed a demurrer. The court sustained the demurrer to the complaint without leave to amend and sustained the demurrer to the petition with leave to amend. A first

amended petition was served and Metropolitan filed a demurrer and motion to strike. In November 2010, the court sustained the demurrer and granted the motion to strike, both without leave to amend. The court's order has the effect of dismissing the case. This matter was handled by the Legal Department.

*Metropolitan v. AFSCME Local 1902*: Hearing Officer David Hart issued a decision on February 26, 2010 denying Metropolitan's request to dismiss two Local 1902 grievances. The grievances seek CalPERS credit for overtime worked by a crew of desert maintenance workers. The overtime resulted from a year-long assignment of irregular 12.5 shifts in connection with the effort to eradicate quagga mussels. Metropolitan objected to a hearing on the merits because CalPERS has exclusive jurisdiction to determine whether overtime hours can be credited towards a CalPERS retirement. On May 25, 2010, Metropolitan appealed Hearing Officer Hart's decision by filing a petition for writ of administrative mandamus with the Los Angeles Superior Court. The petition alleged the Hearing Officer failed to proceed in the manner required by law by applying arbitration principles, which is contrary to an earlier court of appeal determination that the MOU hearing officer appeal procedure is not arbitration, but rather an administrative proceeding. (*AFSCME Local 1902, AFL-CIO v. Metropolitan Water District of Southern California* 126 Cal.App.4<sup>th</sup> 247 (2005)) In addition, the petition alleges the Hearing Officer improperly determined MWD waived its objections, because under well-established legal precedent subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel. (*Mumaw v. City of Glendale* 270 Cal.App.2d 454, 459-460 (1969)) On December 15, the parties settled this matter. Under the settlement, AFSCME agreed that CalPERS – and not a hearing officer – has jurisdiction to make the determination whether the overtime in question qualifies for CalPERS credit. AFSCME also agreed that Mr. Hart's decision cannot be cited as precedent. Pursuant to this settlement, Metropolitan dismissed the superior court action BS126570 on December 16. The Legal Department represented Metropolitan.

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### Workforce

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

#### **PERB Unfair Labor Practice Charges**

Defended Metropolitan's interests and management rights in several matters before the PERB alleging unfair labor practices pursuant to the Meyers-Milias-Brown Act. Of the five PERB matters that have been active during the past twelve months, one PERB charge has been withdrawn by the filing bargaining unit based on objections raised by the Legal Department, one PERB charge was settled after PERB issued a complaint, one PERB charge is at the post-hearing briefing stage after a three-day administrative trial in February 2011, one PERB charge is at the informal conference stage after PERB issued a complaint and PERB has placed the processing of the remaining PERB charge in abeyance due to settlement discussions between the parties. The Legal Department will continue to defend Metropolitan's interests in these matters.

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

Defended Metropolitan's interests in hearing officer appeal requests lodged by the bargaining units. The Legal Department calendared hearing officer appeals involving eight grievances and eight disciplinary actions this fiscal year. We have received one hearing officer decision on the merits, on which the District prevailed. One other hearing officer decision was received based on jurisdictional objections raised by the Metropolitan, and Metropolitan's jurisdictional objections were overruled. The Legal Department negotiated settlements of ten appeals involving five grievances and five disciplinary actions. Two appeals were voluntarily withdrawn; one concerned a grievance and the other a disciplinary action.

#### **Equal Employment Opportunity (EEO) Claims**

Working with the EEO Office, Legal staff represented Metropolitan in EEO agency actions, including mediation.

#### **Policies**

Revised Legal Department Primer to include all subjects required for ethics training under AB 1234. Worked with other groups to draft a social media policy and advised on related legal issues.

## General Counsel's Annual Report on Fiscal Year 2010/11 Business Plan Accomplishments

### Real Property Matters

Provide legal support on various real estate issues, including property rights, use, acquisitions and annexations.

#### Activities

##### Real Estate Issues

Provided legal counsel to RPDAM 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 efforts of RPDAM on an option agreement recently negotiated with BrightSource Energy. Support included negotiation and drafting of legal documents including the option agreement and draft lease. Participated in negotiations and drafted lease to use part of the DVL Visitors Center as part of a charter school proposed by the Western Science Center.

Worked with RPDAM in negotiation of an option agreement with Axio Power. Support included drafting all documents, including an option agreement and draft lease.

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 Water Systems Operations that management considered a potential safety hazard for the facility.

Worked with RPDAM to resolve a dispute with Angel View Crippled Children's Foundation regarding an easement held by Metropolitan since 1933.

Supported the expanded work efforts of the 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.

Assisted RPDAM staff in completing internal procedures necessary prior to 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 settlement of all pending condemnation cases relating to the Perris Valley Pipeline.

##### Annexations

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

## General Counsel's Annual Report on Fiscal Year 2010/11 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:

- \$88,845,000 Water Revenue Refunding Bonds, 2010 Series B, issued on July 22, 2010. These fixed rate bonds refunded \$100 million of variable rate bonds supported by a standby bond purchase agreement expiring on July 27, 2010.
- \$39,485,000 Waterworks General Obligation Refunding Bonds, 2010 Series A, issued on October 13, 2010, to refund outstanding general obligation bonds and produce debt service savings.
- \$250 million Water Revenue Bonds, 2010 Authorization, Series A, issued on December 22, 2010, to provide funding for the capital investment program. These bonds are Metropolitan's third series of Build America Bonds (BABs), which are taxable bonds authorized to be issued by tax-exempt entities under federal economic stimulus legislation. The federal government directly subsidizes these bonds by paying Metropolitan 35 percent of the semiannual interest costs. The transaction was required to be completed before the federal authorization for BABs expired on December 31, 2010.
- \$228,875,000 Water Revenue Refunding Bonds, 2011 Series A (SIFMA Index Mode), issued on June 2, 2011. These bonds are similar to Metropolitan's outstanding variable rate bonds with rates pegged to the SIFMA Index, with more flexible documents that permit mandatory tender dates as long as three years from the issuance or remarketing date. These bonds included two series with a

one-year mandatory tender and two series with a two-year mandatory tender.

- \$167,855,000 Water Revenue Refunding Bonds, 2011 Series B, issued on June 30, 2011. These fixed rate bonds refunded outstanding variable rate bonds, fixed rate bonds and a State Revolving Fund loan for debt service savings.

Prepared remarketing statements and assisted with documentation for the remarketing of Metropolitan's Water Revenue Refunding Bonds, 2009 Series A-2 and 2009 Series A-1 (SIFMA Index Mode). These bonds bear interest at a rate that is reset at least annually through remarketing of the bonds.

Negotiated and prepared the Amended and Restated Standby Bond Purchase Agreement with JPMorgan Chase Bank, N.A. that provides liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2004 Series A-1 and A-2. The amended agreement extended the termination date of the existing agreement to September 30, 2012. The legal work for Metropolitan was performed by Legal Department staff attorneys.

Assisted with Amended and Restated Standby Bond Purchase Agreement with Bank of America, N.A. that provides liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2008 Series A-1 that extended the termination date of the agreement to September 2013, and the Standby Bond Purchase Agreement with Barclays Bank PLC that provides liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2008 A-2 to September 2013. The Barclays agreement replaced an expiring agreement with Landesbank Baden-Württemberg.

Posted Metropolitan's annual financial information filings for calendar year 2010, pursuant to continuing disclosure requirements for outstanding bond issues. Filed timely notices of material events with the Electronic Municipal Market Access (EMMA) system.

## General Counsel's Annual Report on Fiscal Year 2010/11 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.

Assisted with novation of four interest rate swap transactions, transferring all obligations under those transactions from UBS to Deutsche Bank.

#### **Rates and Charges**

Researched and advised on budget and rate matters.

Defended litigation seeking to invalidate Metropolitan's rates and charges adopted April 13, 2010. This case specifically challenges inclusion of State Water Project transportation costs and the Water Stewardship Rate in its water transportation charge. Organized participation by eight member agencies that have joined the case in support of Metropolitan.

Defended rate structure integrity language in existing local resources contracts with member agencies to ensure recovery of costs of service for conservation programs providing District-wide benefits.

#### **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 2010/11 Business Plan Accomplishments

### Administration

Provide legal and administrative support on various matters and continue to explore and implement processes which enhance the effectiveness and efficiency of Legal Department operations.

#### Activities

##### Cost Management

Managed legal costs by using in-house counsel to the extent feasible for contracts, claims, acquisitions and litigations.

Litigated and settled 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*; *Kitos v. Metropolitan*; *Robinson v. Metropolitan*; *AFSCME Local 1902 v. Metropolitan*; *Ellsworth v. Metropolitan, et al.* (through November 2010); and *Minor v. Metropolitan* (through November 2010).

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.

Continued to reallocate workload resulting from three vacant administrative positions.

##### Public Records Act Requests

Responded to a number of Public Records Act requests and document subpoenas. Responded to over 50 Public Records Act requests, for which approximately 100 boxes of documents and over 11 gigabytes of electronic data were provided primarily relating to Metropolitan's contracts and agreements; proposals; information on staff and Directors' salaries, benefits and expenses; overall labor costs; construction projects; water transfers; rates; financing and bond information.

##### Contracting Issues

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

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

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 provided training in areas of current topical interest to Metropolitan.