



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

COMMITTEE ITEM

● **Legal and Claims Committee**

July 10, 2018 Committee Meeting

7a

Subject

General Counsel's Business Plan for fiscal year 2018/19

Description

The General Counsel's FY 2018/19 Business Plan establishes the anticipated focus of the Legal Department for the next fiscal year. The Business Plan focuses on the work required to support Metropolitan's priorities, as described in the General Manager's Business Plan and the Legal Department budget for fiscal year 2018/19.

The role of the Department is to support the priorities established by the Board of Directors and the General Manager. The goal of the Legal Department is to provide a full range of legal services in a professional, timely, cost-effective, and creative manner that minimizes risk to Metropolitan. The Department must be flexible and capable of responding on short notice to litigation and other unanticipated matters. The proposed Business Plan (**Attachment 1**) includes anticipated activities consistent with the priorities of Metropolitan as set forth in the Budget and the General Manager's Business Plan.

Policy

Metropolitan Water District Administrative Code Section 6436(b): Annual and Quarterly Reports to Legal and Claims Committee



Marcia Scully
General Counsel

7/2/2018

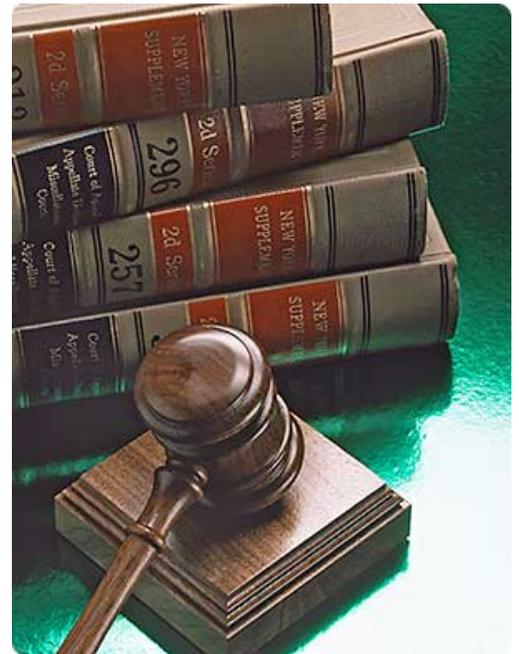
Date

Attachment 1 – General Counsel's Business Plan for Fiscal Year 2018/19

The Metropolitan Water District of Southern California



General Counsel’s Business Plan Fiscal Year 2018/2019



Purpose: The General Counsel’s FY 2018/19 Business Plan establishes the anticipated focus of the Legal Department for the next fiscal year. The role of the Department is to support the priorities established by the Board of Directors and the General Manager, and to provide a full range of legal services in a professional, timely, cost-effective and creative manner.

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California WaterFix

Permits and Litigation

On October 10, 2017, the Metropolitan Board authorized supporting California WaterFix (CWF) and financing up to 24.9% of the project cost. In support of the Board action, staff will continue the work required to **permit CWF and coordinate with the Department of Water Resources (DWR) and the State Water Contractors (SWC) to defend litigation** challenging CWF.

In June 2017, the U.S. Fish and Wildlife Service and National Marine Fisheries Service issued biological opinions for CWF, and within days two groups of plaintiffs filed litigation in federal district court challenging their validity under the federal Endangered Species Act and Administrative Procedure Act. In July of 2017, DWR completed the environmental review process under the California Environmental Quality Act (CEQA), approved the CWF, and adopted bond resolutions to finance design, permitting and construction. In addition, DWR filed a validation action seeking judicial confirmation of DWR's authority to issue revenue bonds to finance the Project. Shortly thereafter, the California Department of Fish and Wildlife (DFW) issued an incidental take permit for the Project pursuant to the California Endangered Species Act (CESA).

There are 23 cases challenging CWF currently pending in federal and state court. There are two cases pending in federal District Court challenging the biological opinions. Twenty state-court cases have been coordinated in Sacramento County Superior Court under the name *CDWR Environmental Impact Cases*, including DWR's validation action, 17 cases challenging DWR's and DFW's compliance with CEQA and CESA, as well as DWR's compliance with various other laws, and two cases challenging DFW's compliance with CESA. In addition, the City of Antioch has also filed litigation alleging that DWR breached a 1968 settlement agreement in connection with mitigation of potential CWF water quality impacts. Metropolitan and the SWC have intervened in the two federal biological opinion cases. Metropolitan is a named party in one of the 20 coordinated CEQA cases, and filed an answer in support of DWR in the validation action. Metropolitan will move to intervene in the CEQA and CESA cases where it is not yet a party. Metropolitan will continue to monitor the City of Antioch case.

In addition to the biological opinions and incidental take permit, additional permits and approvals will be required involving administrative proceedings, including the State Water Resources Control Board (SWRCB) approval of the **change in point of diversion** and any administrative appeals of DWR's **certification of consistency**

California WaterFix

with the Delta Plan which will be heard and ruled on by the Delta Stewardship Council. Metropolitan will continue to work with DWR and the SWC to obtain all required approvals, and if they become subject to additional litigation, Metropolitan will defend or intervene to defend its interests as needed.

Significant legal resources will be required. Metropolitan's staff attorneys will continue to be intimately involved in the various litigation matters, but due to the number and diversity of cases, Metropolitan has retained special counsel, sometimes jointly with the SWC, to gain specialized expertise and strategic assistance to adequately protect its interests in the current and anticipated future litigation.

Contracts

Legal will continue to provide assistance with **negotiation and documentation of the numerous agreements**, required with DWR and state and federal water contractors participating in design, construction, or financing of CWF.

Provide legal advice and assist in drafting agreements related to the construction, cost allocation, financing and implementation of the CWF consistent with the Board's authorizations and direction.

Legislation

Review and analyze proposed **legislation, regulations, and amendments** that may **affect implementation** of the CWF.



California WaterFix

Water Supply Reliability

Water Supply Issues

Provide legal advice and support relative to:

- Potential implementation of the proposed **Regional Recycled Water Program** with the Los Angeles County Sanitation Districts.
- **Water supply, delivery, and quality issues** and related legislation and regulations. Proposed legislation and regulations.
- Development of a **legislative and regulatory strategy** addressing the Governor's Executive Order B-37-16, "Making Water Conservation a California Way of Life."
- Documentation of water transfers and exchanges and development of **demand management programs**.
- Implementation of the **2015 Integrated Water Resources Plan (IRP) Update and 2015 Urban Water Management Plan (UWMP)**.
- **Permits and capital projects** required to provide additional flexibility in the operation of Metropolitan's distribution system, meet the special needs of member agencies, and address potential issues resulting from concerns relating to possible invasive species within the State Water Project.
- **Participation in the Sites Reservoir planning effort** to augment dry-year supplies.

State Water Project (SWP)

Represent Metropolitan, as a separate party or working through the SWC, in **litigation and regulatory proceedings** relating to:

- Operation of the SWP.
- Water diversions.
- Delta or SWP supplies.
- The Delta Plan and regulations.

Provide legal advice and representation regarding compliance with the **Delta Plan** and regulations adopted by the **Delta Stewardship Council**.

Water Supply Reliability

Provide legal support regarding **Delta science and habitat restoration objectives**.

Represent Metropolitan's interests before the SWRCB as a separate party or through the SWC on matters of concern to Metropolitan including:

- Water Quality Control Plan amendments.
- Methyl mercury TMDL.

In cooperation with the Water Master, participate in water measurement study and Delta Island water balance study on Metropolitan's Delta properties related to water curtailment issues.

Provide legal support in ongoing negotiations between SWC and DWR related to various charges in the annual **Statement of SWP Charges**.

Provide legal support relating to the proposed amendments of the **SWP contract** to extend the term and provide for CWF.

Defend the **Monterey Amendment** in ongoing CEQA proceedings.

Provide legal support and advice on issues related to the **damaged spillways at Oroville Dam**, including implementation of DWR's proposed recovery plan, allocation of repair costs, mitigation and public outreach.

Provide legal advice and support for:

- Metropolitan's and DWR's cooperative efforts relating to **SWP infrastructure**.
- Development of the SWP Multi-Year Market Pool and similar programs for the **sale and purchase of SWP water**.
- Relicensing of the **Oroville/Hyatt-Thermalito Power Complex** by the Federal Energy Regulatory Commission.

Colorado River

Provide legal support for Metropolitan's efforts to **protect** and make **optimal use** of its **Colorado River water rights** and related water transfer, storage, and exchange programs.

Represent Metropolitan in negotiation and documentation of a potential **Drought Contingency Plan** and individual conservation agreements.

Water Supply Reliability

Represent Metropolitan in negotiation of agreements with the Republic of Mexico.

Represent Metropolitan in other administrative proceedings and litigation relating to the Colorado River.

Continue to participate as intervenors in the lawsuit brought by the **Navajo Nation** challenging the Secretary of the Interior's operations in the **Lower Colorado River**.

Monitor litigation challenging **storage of Colorado River water in the Coachella Valley**.

Continue to provide legal support for:

- Continued implementation of the **Quantification Settlement Agreement (QSA)**.
- Resolution of disputes over implementation of the QSA water transfers.
- Compliance with QSA mitigation obligations.

Assist in developing, negotiating, and documenting new **water conservation and augmentation projects** to address the long-term supply and demand issues identified in the Bureau of Reclamation's 2012 Colorado River Basin Water Supply and Demand Study.

Monitor Colorado River water quality and matters that may affect it, including:

- Remediation of groundwater contamination at **Topock**.
- Remediation of the **Tronox** site and use of settlement funds from the Tronox adversary action.
- Development of the work plan for the **regional groundwater investigation**.
- Changes to **state and federal perchlorate and chromium 6 regulations**.

Water Supply Reliability

District Governance and Support

Provide timely advice to the Board and committees on ***governance and legal compliance*** matters.

Assist board support staff on matters relating to the board letter process.

Work with the Board Administrator to develop training materials on board letters and the board letter process.

Work with the Ethics Office to provide advice on:

- MWD Act/Administrative Code.
- Government Code Section 1090.
- Political Reform Act.

Work with Group Managers and Direct Reports to prepare proposed amendments and revisions to:

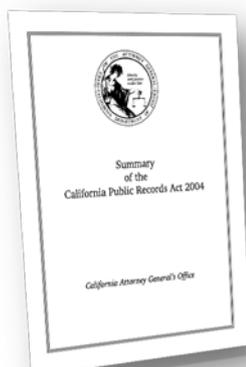
- Metropolitan Water District Administrative Code to make substantive changes, eliminate inconsistencies and provide clarification.
- Update Operating Policies as needed.

Continue to coordinate Metropolitan responses to ***Public Records Act*** requests.

Provide ***amicus*** support in litigation impacting Metropolitan's interests.

Legislation

- ***Analyze*** proposed legislation affecting Metropolitan.
- Prepare and/or review proposed legislation and amendments.
- Assist with ***development*** of legislative strategy.



District Governance and Support

Workforce/Human Resources

Provide proactive counsel and advice on workforce issues and deferred compensation plan matters.

Defend Metropolitan in:

- Employment litigation.
- Public Employment Relations Board matters.
- Workforce disputes.
- Grievance and disciplinary matters.

Provide legal advice and support for **documentation and implementation** of:

- Metropolitan Memoranda of Understanding.
- Management initiatives.
- Affirmative action.
- Non-discrimination plans.
- Deferred compensation record keeping agreements.
- Staffing for CWF.



Workforce/Human Resources

Real Property

Assist Real Property Development and Management Group (RPDAM) in:

- Negotiation and documentation of real property **acquisitions**.
- Marketing and conveyance of **surplus** real property.
- **Leasing and licensing** of Metropolitan property.
- Grant and acceptance of **easements and entry permits**.
- Preparation for **upgrades to Union Station**.

Support the expanded work efforts of RPDAM to **manage** Metropolitan's recently acquired property.

Continue to defend Metropolitan in litigation related to the recent acquisition of real property in the Delta.

Work with RPDAM to **eliminate unauthorized encroachments** on Metropolitan's property.

Work with RPDAM to enhance security of Metropolitan's property.

Participation in **Security Task Force**.



Real Property

Finance

Provide legal advice regarding adoption of **rates and charges** and levying of ad valorem taxes.

Continue to **defend** Metropolitan against challenges to its rate structure and other finance matters.

Provide legal support for Metropolitan's **financial transactions**.

Provide review of legal compliance with financial documents in connection with the annual **audit**.

Assist in development of proposed **financing structures**.

Prepare accurate and timely **disclosures** to the municipal markets.

Monitor and report on litigation and legislation relating to **public agency water rates** at the wholesale and retail levels.

Provide legal support for Metropolitan's **financial planning** in relation to its capital investment plan and other long-term investments.

Technology

Collaborate on ***Information Governance Initiatives and Policies*** with:

- Information Technology Group.
- Administrative Services.
- External Affairs.
- Human Resources.

Continue to collaboratively work with the Information Technology staff and other department staff to assist in the development of policies and procedures relating to:

- Appropriate use of ***new technology and equipment***.
- The use of ***drones, mobile devices and MWD applications***.
- Contracts for ***cloud services including Software as a Service (SaaS), Platform as a Service (PaaS), and infrastructure as a Service (IaaS)***.
- **Cyber-security issues.**
- Content Management issues.
- Data and records retention.



Technology

Corporate Resources/ District Infrastructure

Provide legal support with respect to **contracting** for:

- Capital investment projects.
- Repair and replacement projects.
- Professional services.
- Procurement.

Provide legal support for **CEQA compliance** of Metropolitan's projects and other discretionary actions.

Analyze potential **operational and environmental impacts** of other agencies' projects on Metropolitan's properties and facilities.

Defend Metropolitan against claims and litigation arising from construction contracts, operations, and CEQA compliance.

Assist Business Outreach staff in the formulation and revision of policies related to **small, regional, and veteran-owned businesses**.

Provide Corporate Resources staff with legal advice to develop a comprehensive **document retention and management** process.



Corporate Resources/District Infrastructure

Operations

Provide legal support for ***operational safety and environmental compliance***.

Provide legal assistance with:

- Negotiating and preparing new or amended ***service connection agreements***.
- ***Regulatory and permitting*** issues relating to both water deliveries and changes to Metropolitan's infrastructure to support operational requirements.
- ***CEQA compliance*** for operations and maintenance projects.

Work with the SWRCB and Regional Boards as they revise ***municipal stormwater discharge permits*** to assure that Metropolitan maintains the ability to discharge system water as part of maintenance operations.

Continue to represent Metropolitan in ***water quality litigation***, including:

- ***OCWD v. Northrop*** litigation relating to ***perchlorate or other contaminants*** in Metropolitan's service area.
- ***Copper pitting*** cases alleging that water delivered in Orange County is corrosive and causing leaks in copper plumbing.
- Litigation relating to operation of dental clinics in Orange County.



Operations

Energy Costs and Management

Assist with implementation of the **Energy Management Plan**, including providing advice on:

- Wholesale energy transactions.
- Renewable energy projects.
- Energy-related contracts.
- Legislation.

Assist staff with **long-term resource and transmission planning**.

Assist with implementation of new contract with **Southern California Edison** Co, the Arizona Electric Power Cooperative, Inc., and the California Independent System Operator for the operation and resource management of the Colorado River Aqueduct Transmission System.

Provide legal support to ensure that **SWP energy needs** are met in a cost-effective and sustainable manner.

Participate in proceedings to protect and promote Metropolitan's financial and regulatory interests at:

- Federal Energy Regulatory Commission.
- Air Resources Board.
- California Public Utilities Commission.
- Other agencies, as appropriate.

Energy Costs and Management

Legal Department Administration

Build capacity to **handle litigated matters in-house**.

Aggressively **manage outside counsel costs**, while obtaining **effective representation** to protect Metropolitan's interests.

Upgrade technology within the Legal Department and improve efficient use of Metropolitan resources.

Provide ongoing training opportunities related to:

- Litigation skills.
- Drafting of contracts and other documents.
- Oral and written communication.
- Presentation skills.
- Leadership and management skills.

Develop and implement **succession planning**.

Provide an appropriate level of staffing.

Provide timely employee evaluations.

Legal Department Administration