



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

COMMITTEE
ITEM

- *Legal and Claims Committee*

August 20, 2019 Committee Meeting

7b

Subject

General Counsel's Business Plan for fiscal year 2019/20

Description

The General Counsel's FY 2019/20 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 2019/20.

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

Date

Attachment 1 – General Counsel's Business Plan for Fiscal Year 2019/20

The Metropolitan Water District of Southern California



General Counsel’s Business Plan Fiscal Year 2019/2020

Purpose: The General Counsel’s FY 2019/20 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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Delta Conveyance

Permits and Litigation: Significant Staff Support Required

In July 2018, the Metropolitan Board authorized supporting California WaterFix (CWF) and financing up to 64.6% of the cost of the proposed twin tunnel project. In May 2019, pursuant to direction from Governor Newsom, the Department of Water Resources (DWR) withdrew its petition for a change in the point of diversion from the State Water Board and de-certified the CWF Environmental Impact Report (EIR).

In 2017, DWR filed a validation action to legally validate DWR's authority to finance CWF. The 23 CEQA challenges were coordinated with the validation action.

In June, motions to dismiss DWR's validation action and the CEQA challenges to CWF were filed, along with motions by the plaintiffs seeking attorneys' fees. Metropolitan will continue to participate in this litigation until completion.

It is anticipated that in late 2019, DWR will issue a new Notice of Preparation (NOP) of an EIR for a new proposal to improve the State Water Project (SWP) with additional conveyance facilities. Metropolitan staff will assist with the work required to complete the new EIR.

Pursuit of a new proposal will involve filing a new validation action and request for change in point of diversion with the State Water Resources Control Board (SWRCB). These activities will require considerable staff support and will likely result in additional litigation.

In late July 2019, the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) completed revised draft Biological Opinions and Proposed Actions that were made available to DWR and the State Water Contractors (SWCs). The Biological Opinions and Proposed Actions will impact operation of the SWP whether or not there are improvements to the conveyance system. Staff will continue the work related to Fish and Wildlife and other permits required for continued long-term operation of the SWP.

There are four active cases challenging the Delta Stewardship Council's Delta Plan and regulations. Staff will continue to be actively involved in this litigation.

DWR has filed a validation action seeking a judgment that affirms that the Contract Extension amendments to the State Water Contracts are lawful. Metropolitan and six other SWCs filed answers in support of validity. Staff will continue to participate in this litigation. Two cases have been filed alleging CEQA and Delta Reform Act violations relating

to the SWP Contract Extension. Staff is preparing to intervene in these cases in support of DWR. Until the Contract Extension is approved and validated, DWR is limiting the amortization of new bonds to the remaining 15-year term of the current contract.

Litigation has been filed challenging the Coordinated Operating Agreement (COA) Addendum/No-Harm Agreement. Staff will continue to monitor this litigation.

The Design and Construction Authority (DCA) will continue to work on pre-construction investigation and analysis.

Contracts

Legal will continue to provide assistance with ***negotiation and documentation of the numerous proposed agreements.***

Legislation

Review and analyze proposed ***legislation, regulations, and amendments*** that may ***affect implementation*** of Delta Conveyance.



Water Supply Reliability

Water Supply Issues

Provide legal advice and support relative to:

- Potential implementation of the proposed **Regional Recycled Water Program** with Los Angeles County Sanitation Districts.
- **Water supply, delivery, and quality issues** and proposed related legislation and regulations.
- Development and implementation 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 preparation of the 2020 Urban Water Management Plan (UWMP)**.
- Preparation of the **SB 60 Report** to the California State Legislature regarding Metropolitan's achievements in conservation, recycling, and groundwater recharge.
- **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 SWP.
- **Participation in the Sites Reservoir planning effort** to augment dry-year supplies.
- Preparation of the **Annual Drinking Water Quality Report**.
- Monitor and provide assistance in programs relating to new **regulations and legislation** regarding **emerging contaminants** and **contamination in groundwater storage programs**.

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.

Water Supply Reliability

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

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 potential improvements to Delta Conveyance.

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.

Water Supply Reliability

Represent Metropolitan in defending against CEQA challenge to approvals related to the ***Drought Contingency Plan***.

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 former ***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

Administration

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, including approval and documentation of proposed **amendments to the Administrative Code** relating to the procedures and policies of the Ethics Office.
- 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

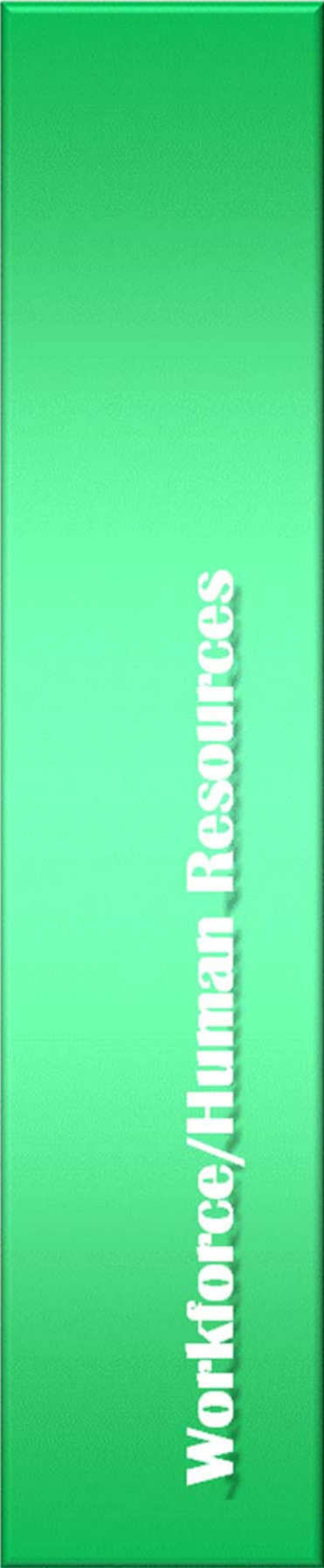
Provide proactive counsel and advice on workforce issues and deferred compensation plan matters.

Defend Metropolitan in:

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

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

- Metropolitan Memoranda of Understanding.
- Management initiatives.
- Affirmative action.
- Non-discrimination plans.
- Deferred compensation recordkeeping agreements.
- Deferred Compensation Plan revisions and updates for compliance with tax law changes.
- Staffing to assist DWR/DCA related to Delta Conveyance.
- Workplace health and safety.



Real Property

Improve Legal Department capacity in real property matters including leasing, agricultural and issues relating to remote sites.

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**.
- Implementation of **upgrades to Union Station**.

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

Continue to **defend** Metropolitan in litigation related to Metropolitan's property

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

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

Provide assistance with **annexation** matters

Participation in **Security Task Force**.



Finance

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

Work with Board and management to **achieve a final resolution/settlement** of litigation related to Metropolitan's rates, charges, breach of contract 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.

Provide training to staff and Board regarding ***financial disclosures***.

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)**.
- **Cybersecurity issues**.
- Data and **records retention**.
- **Calendaring system** to track agreements.

Provide training to Board on emerging legal issues relating to technology.



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 capital 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.
- ***Compliance with safety regulations*** and response to Notices of Violation.

Work with the SWRCB and Regional Boards as they revise ***municipal stormwater discharge permits*** to ensure 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.



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 staff with developing the **Climate Action and Sustainability Plans**.

Assist with implementation of a new contract with **Southern California Edison**, 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 or monitor 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.

Monitor **climate change litigation**.

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.

