



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Committee Item INFORMATION

• **Legal and Claims Committee**

July 8, 2024 Committee Meeting

7a

Subject

General Counsel's Business Plan for fiscal year 2024/2025

Role of the General Counsel

The role of the General Counsel is to serve as the attorney for The Metropolitan Water District of Southern California; to represent Metropolitan in all actions and proceedings; to serve as the legal advisor to the Board and Officers of Metropolitan; and to cooperate with and assist the General Manager and his staff by providing a full range of legal services in a professional, timely, cost effective, and creative manner.

Description

The General Counsel's fiscal year 2024/2025 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, authorized by the Board, and described in the General Manager's Business Plan.

Drivers:

Unplanned matters – Litigation and other adversary actions:

The General Counsel represents Metropolitan in all actions and proceedings. In addition to litigation, this involves pre-litigation claims, regulatory matters such as Cal-OSHA citations and permits. In over 90% of such matters, Metropolitan is the defendant: the litigation is not planned or initiated by Metropolitan. The Department must be flexible and capable of responding on short notice to litigation and other unanticipated matters. Although the nature and timing of matters are unplanned, the General Counsel's Office anticipates and plans to respond to claims, citations, and litigation that will be filed each year.

Priorities of the Board and the General Manager

Equally important to representing Metropolitan in disputed matters, 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 assist with implementation of Board priorities in a manner that minimizes risk to Metropolitan.

Legal's support includes providing advice, drafting documents, and taking other actions to minimize risk to Metropolitan in the implementation of the District's priorities as well as in responding to requests of Metropolitan from third parties.

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

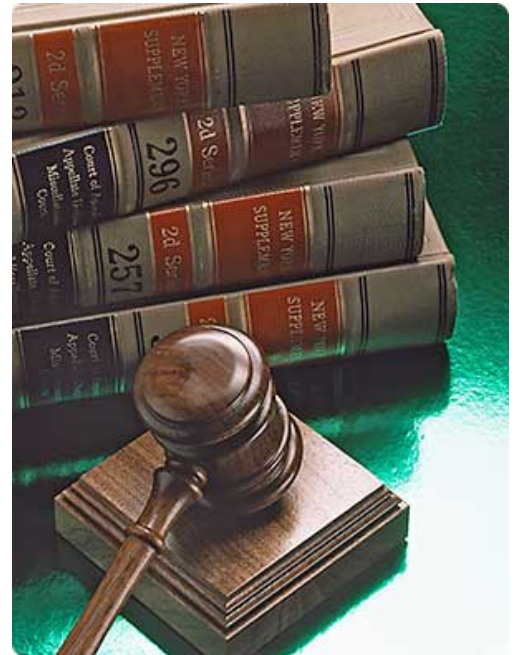
	7/3/2024
Marcia Scully	Date
General Counsel	

Attachment 1 – General Counsel’s Business Plan for Fiscal Year 2024-2025

The Metropolitan Water District of Southern California



General Counsel's Business Plan Fiscal Year 2024/2025



Purpose: The General Counsel's fiscal year 2024/2025 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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Water Supply Reliability

Colorado River: Climate Change

Provide legal advice and assist with documentation and implementation with proposed voluntary or potential mandatory Colorado River conservation measures, and strategies relating to negotiation of new guidelines to minimize risk and protect water supply.

Assist with negotiation and drafting agreements necessary to implement short and long term conservation measures required by the Bureau of Reclamation (Bureau) to stabilize Lake Mead and Lake Powell, including forbearance and fallowing agreements.

- Advise regarding the required actions for approval
- Review and assist with preparation of requests for federal funds
- Provide support in renegotiation of the Colorado River Interim and Post-2026 Operating Guidelines, and related environmental studies and permitting coverage
- Represent Metropolitan in the implementation of agreements with the Republic of Mexico
- Represent Metropolitan in other administrative proceedings and litigation relating to the Colorado River

Water Quality

Continue to monitor and comment on matters impacting Colorado River water quality including:

- Remediation of groundwater contamination at Topock
- Remediation of the former Tronox site and use of settlement funds from the Tronox adversary action, and remediation of the former PEPCON/AMPAC site
- Investigation and remediation of the Hoover Dam waste disposal site
- Changes to state and federal perchlorate and chromium 6 regulations
- Assist as requested with program to reduce salt/dissolved solids

State Water Project (SWP)/Bay Delta

Represent Metropolitan, as a separate party or working through the State Water Contractors (SWC), in litigation and regulatory proceedings relating to:

- Permits and operation of the SWP
- Water diversions and deliveries
- Delta/SWP supplies
- The update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary
- The Delta Plan and regulations

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 State Water Resources Control Board (SWRCB) as a separate party or through the SWC on matters of concern to Metropolitan, including:

- Bay Delta Water Quality Control Plan amendments, including assisting with negotiation of the Agreements to Support Healthy Rivers and Landscapes
- Methyl Mercury TMDL
- Protecting stored water releases

Provide legal support in ongoing negotiations between SWC and Department of Water Resources (DWR) concerning various SWP financial and billing issues in the annual Statement of SWP Charges.

Provide legal advice and support for:

- Metropolitan's and DWR's cooperative efforts relating to SWP infrastructure
- Implementation of the SWP Contract Extension Amendment

- 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

Provide legal advice and support for drought response actions, including potential legislation or regulations affecting SWP supplies.

Continue to assist with negotiation, drafting, and documentation of proposed agreements or amendments to existing agreements, including Metropolitan's SWP contract.

Delta Conveyance Project (DCP)

As authorized by the Board, assist with the work required to complete necessary regulatory approvals and permitting, including the change in point of diversion petition at the State Water Resources Control Board and certification of consistency with the Delta Plan.

Represent Metropolitan in environmental litigation challenging DWR's compliance with CEQA and other environmental laws.

Review and analyze proposed legislation, regulations and amendments that may affect implementation of DCP or impact Metropolitan's interest in the Delta.

Continue to assist with negotiations of SWP contract amendments to allocate costs and benefits of the DCP.

Water Supply Issues

Provide legal advice and support regarding:

- Water supply, delivery, and quality issues
- Development and implementation of a legislative and regulatory strategy addressing the Governor's Water Resilience Portfolio
- Draft documentation and advise on Future Supply Actions Funding Program and Local Resources Program

Pure Water Southern California

Assist with the development and implementation of the proposed Pure Water Southern California recycled water project with Los Angeles County Sanitation Districts, including assistance with:

- environmental studies and permitting
- right-of-way acquisition
- preliminary design
- construction contracts
- electrical upgrades
- grant funding applications
- regulatory compliance issues and other matters

Provide legal support to secure grant funds for planning and infrastructure projects, including the Pure Water Southern California Project.

Groundwater Storage Projects

Assist with implementation of Antelope Valley-East Kern Water Agency (AVEK) High Desert Water Bank Groundwater Storage Program, including:

- contracts
- permitting and water quality issues
- power issues and agreements
- environmental review

Arvin-Edison Water Storage District Groundwater Storage Program:

- Existing and emerging contaminants
- Operational challenges

Semitropic Storage Program

Continue to represent Metropolitan in water quality litigation, including:

- Monitoring Arvin-Edison Water Storage District's (Arvin-Edison) and Semitropic Water Storage District's (Semitropic) lawsuits regarding 1,2,3-trichloropropane (TCP) in Arvin-Edison's and Semitropic's groundwater
- Continue to represent Metropolitan's interests with respect to nationwide per and polyfluoroalkyl litigation (PFAS).

Surface Water Storage

Assist with the Sites Reservoir planning effort to augment dry-year supplies.

Distribution/Delivery

State Water Project Dependent Areas

Assist with permits and capital projects required to:

- provide additional flexibility in the operation of Metropolitan's distribution system
- meet the special needs of SWP-dependent member agencies
- address potential issues relating to potential invasive species within the SWP

Transfer/Exchanges

Provide legal advice and support for documentation of water transfers and exchanges and development of demand management programs.

Conservation

Provide legal advice and support regarding:

- Development and implementation of emergency conservation measures intended to maximize available supplies
- LRP and other conservation programs

Legislation/Regulation

Provide legal advice and support regarding:

- issues and proposed legislation and regulations regarding both regulated and emerging contaminants, such as PFAS

Continue to monitor and participate as amicus (as appropriate) in litigation regarding:

- The definition and scope of waters of the United States protected under the federal Clean Water Act
- EPA determinations and actions to regulate specific contaminants in drinking water

Water Supply Plans

- Implementation of the 2020 Integrated Water Resources Plan (IRP) and implementation of the 2020 Urban Water Management Plan (UWMP) and Water Shortage Contingency Plan (WSCP)
- Development of the 2025 UWMP and WSCP
- Preparation of the annual SB 60 Report to the California State Legislature regarding Metropolitan's achievements in conservation, recycling, and groundwater recharge
- Preparation of the Annual Drinking Water Quality Report

Finance/Business Model/Camp4W

Revenue

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

Financial Transactions

Provide legal support for Metropolitan's financial transactions, including issuance of bonds and other debt instruments.

Provide review of legal compliance with financial documents in connection with the annual audit and quarterly financial reports.

Assist in development of proposed financing structures.

Assist in the preparation of accurate and timely disclosures to the municipal markets.

Investment/Expenditures/CAMP4W

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

Regulation/Legislation

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

Training

Provide training to staff and the Board regarding financial disclosures and related securities laws.

Representation of District in Disputed Matters/Litigation

Represent Metropolitan in litigation including:

- Defend Metropolitan against disputed matters, claims and litigation arising from construction contracts, operations, and CEQA compliance
- Provide amicus support in litigation impacting Metropolitan's interests
- Coordinate with Risk Manager to resolve Government Code claims, workers' compensation claims, and settlement of litigation

Continue to represent Metropolitan's interests in pending litigation and/or engage in settlement discussions as appropriate, including litigation regarding:

- Rates and exchange agreement
- DWR funding of the Delta Conveyance Project
- Permits relating to the operation of the SWP
- DCP
- SWP contract

Anticipated unknown new matters

- Government Code claims and tort litigation
- CEQA issues
- Employment matters
- Construction-related litigation
- Eminent domain, pre-condemnation activities, and real property issues
- Finance-related matters
- Notices of Violation from Cal-OSHA/AQMD and other regulatory entities
- Rates
- Other matters

Operations/Sustainability

Safety

Provide legal support for operational safety and environmental compliance. Coordinate with Safety Staff to respond to Cal-OSHA and other regulatory issues.

Provide legal support with the development of a FEMA Hazard Mitigation Plan.

Infrastructure

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

Permits

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.

Energy Costs and Management

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

- Wholesale energy transactions
- Sustainable energy projects
- Energy-related contracts
- Legislation and regulations

Assist staff with long-term resource and transmission planning and compliance with national electric reliability standards.

Climate Action/Energy

Assist staff with implementing the Climate Action Plan, Energy Sustainability Plan, Transmission Strategic Plan, and Risk Management Policy.

Assist with implementation of contracts 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
- California Independent System Operator
- California Public Utilities Commission
- Other agencies, as appropriate

Monitor climate change litigation and legislation pertaining to carbon-free generation, DWR energy procurement, and regionalization of transmission operations.

Corporate Resources/ District Infrastructure/CIP

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.

Provide legal support to Engineering and Contracting Services on construction, and professional services contracts and solicitations.

Assist Business Outreach with policies related to small, regional, veteran-owned, and historically underutilized businesses.

Assist in the management and development of a new records retention schedule.

Assist with the implementation of the PLA.

Real Property

Assist and support:

- the acquisition, management, and protection of real property assets
- reduction of expenses related to real property holdings
- generation of revenues.

Assist Asset Management in:

- Maintaining and operating MWD real property assets, Union Station Headquarters Building and Diamond Valley Lake Visitor Center in an environmentally sustainable manner

Assist Planning and Acquisition in:

- Negotiation and documentation of real property transactions

- Disposal of surplus real property
- Planning and valuation of real property and real property rights in support of near term and long-term capital projects and strategic initiatives to meet water supply and infrastructure reliability targets
- Title reviews and environmental property assessments
- Property owner and tenant relocations

Assist Land Management in:

- Management and protection of property assets and the development of secondary revenues from such holdings
- Negotiation and documentation of easements, licenses and permits for the use of land, site use agreements, and leases
- Elimination of unauthorized encroachments on Metropolitan's property
- Annexation matters

Workforce/Human Resources

Provide representation and proactive counsel on workforce and deferred compensation plan matters.

Provide legal advice and support concerning:

- Metropolitan Memoranda of Understanding (MOUs) with Metropolitan's Bargaining Units
- Metropolitan Administrative Code and Operating Policies provisions regulating employee relations and personnel matters
- Employee benefits
- Bargaining unit consultation and negotiations
- Personnel transactions, including recruitment, promotions, transfers, and separations
- Workforce housing and recreational activities for Metropolitan's desert facilities
- When requested, assist with Equal Employment Opportunity (EEO) matters, including mediation of federal U.S. Equal Employment Opportunity Commission (EEOC) and state Civil Rights Department (CRD) Complaints
- Misconduct matters and threat assessments, as requested
- Diversity, Equity, and Inclusion initiatives and compliance, as requested

Supervise consultant investigations concerning:

- Misconduct, as referred by Human Resources or management
- Incident response investigations, as requested by management

Represent Metropolitan in:

- Pre-litigation employment claims
- Employment litigation
- California Public Employment Relations Board (PERB) matters, grievances and hearing officer appeals

Provide specialized advice on Metropolitan's deferred compensation plans, including:

- The plan governance structure
- The recordkeeper contract
- Plan amendments
- Plan loans, distributions, and death benefits

Technology

Collaborate on information governance initiatives and policies with:

- Chief Sustainability Resiliency and Innovation Officer
- Information Technology Group, including software upgrades
- Administrative Services
- External Affairs, including ADA compliance
- Human Resources

Continue to work collaboratively with staff to advise on:

- Appropriate use of new technology and equipment
- Training and pilot testing in use of Generative Artificial Intelligence (AI) applications
- The use of drones, mobile devices, and MWD applications
- Cybersecurity issues, incident response and reporting, new cybersecurity regulations, and the cybersecurity operations center
- Data management, secure data sharing, and records retention
- Calendaring and document management system
- Website content management, access, and regulatory compliance

Work with appropriate business units for a district-wide calendaring system to track key dates for agreement terms.

Provide training to the Board on emerging legal issues relating to technology and social media.

Legislation

Analyze proposed legislation affecting Metropolitan and assist with comments and draft amendments, as requested.

Prepare and/or review Metropolitan-proposed legislation and amendments.

Assist with the development of legislative strategy.

Participate in and support industry groups regarding proposed legislation, including the review and drafting of comments on proposed regulations and legislation.

District Governance and Support

Administration

Provide timely advice to the Board and committees and the Board Executive Officers and staff on governance and legal compliance matters.

Assist board support staff on board letter, board meeting process and technology.

When requested, assist the Chair of the Board, management, and staff regarding amendments to the Administrative Code.

Prepare annual update of the Administrative Code to conform to new legislation.

Assist with review and updates to Metropolitan's Operating Policies, and other internal policies and procedures.

Review and assist with delegations of authority.

Continue to coordinate Metropolitan's responses to Public Records Act requests.

Review contracts to ensure compliance with MWD requirements.

Legal Department Administration

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

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

Provide training in new technologies, including Generative AI and cybersecurity.

Provide ongoing training opportunities related to:

- Minimum Continuing Legal Education compliance
- Litigation skills
- Drafting of contracts and other documents
- Oral and written communication
- Presentation skills
- Leadership and management skills
- Various substantive areas

Develop and implement succession planning.

Provide an appropriate level of staffing.

Provide timely employee evaluations.