



• **Legal and Claims Committee**

July 10, 2023 Committee Meeting

7a

Subject

General Counsel's Business Plan for fiscal year 2023/2024

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 2023/2024 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 FY 2023/2024.

Drivers:

Unplanned matters - Litigation:

The General Counsel represents Metropolitan in all actions and proceedings. In over 90% of such matters, Metropolitan is the defendant. 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 is unplanned, the General Counsel's Office anticipates that claims and litigation will be filed and Metropolitan will be required to resolve or defend.

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 minimizes risk to Metropolitan.

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

July 6, 2023
Date

The Metropolitan Water District of Southern California



General Counsel’s Business Plan Fiscal Year 2023/2024



Purpose: The General Counsel’s fiscal year 2023/2024 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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Climate Adaptation Master Plan

Provide assistance, as requested, in the development and implementation of the Climate Adaptation Master Plan, including provision of advice regarding:

- Impact to Metropolitan's business mode;
- Impact to Metropolitan's financial structure/customer base; and
- Development of programs to benefit disadvantaged communities.

Climate Adaptation Master Plan

Water Supply Reliability

Colorado River

Legal advice regarding proposed voluntary or potential mandatory conservation measures.

Assist with 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, and advise regarding the required actions for approval.

Review and assist with preparation of requests for federal funding.

Provide legal support for Metropolitan in renegotiation of the Colorado River Interim 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.

Continue to monitor and comment on 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, as well as remediation of the former PEPCON/AMPAC site;
- Investigation and remediation of the Hoover Dam waste disposal site; and
- Changes to state and federal perchlorate and chromium 6 regulations.

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, grant funding applications, regulatory compliance issues and other matters.

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

State Water Project (SWP)

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;
- Delta or SWP supplies; and
- 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;
- Methyl Mercury TMDL; and
- Protecting stored water releases.

Provide legal support in ongoing negotiations between SWC and Department of Water Resources (DWR) related to various charges in the annual Statement of SWP Charges.

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; and
- 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.

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, and address

Water Supply Reliability

potential issues resulting from concerns relating to possible invasive species within the SWP.

Groundwater Storage Projects

Assist with contracts for and implementation of Antelope Valley-East Kern Water Agency (AVEK) High Desert Water Bank Groundwater Storage Program.

Assist with analysis of and proposals to continue use of the Arvin-Edison Water Storage District Groundwater Storage Program.

Monitor and assist with programs relating to new regulations and legislation regarding emerging contaminants and contamination in groundwater storage programs.

Delta Conveyance Project (DCP)

Assist with the work required to complete the Environmental Impact Report (EIR) for the revised DCP Program, as well as necessary regulatory approvals and permitting.

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 Voluntary Agreements for approval and implementation of DCP, including allocation of costs and benefits of the Project.

Water Supply Issues

Provide legal advice and support regarding:

- Water supply, delivery, and quality issues and proposed legislation and regulations regarding both regulated and emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS);
- Development and implementation of a legislative and regulatory strategy addressing the Governor's Water Resilience Portfolio;
- Documentation of water transfers and exchanges and development of demand management programs;
- Implementation of the 2020 Integrated Water Resources Plan (IRP) and implementation of the 2020 Urban Water Management Plan (UWMP) and Water Shortage Contingency Plan;
- Preparation of the annual SB 60 Report to the California State Legislature regarding Metropolitan's achievements in conservation, recycling, and groundwater recharge;

Water Supply Reliability

- Assist with the Sites Reservoir planning effort to augment dry-year supplies;
- Preparation of the Annual Drinking Water Quality Report; and
- Development and implementation of emergency conservation measures intended to maximize available supplies.

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; and
- EPA determinations and actions to regulate specific contaminants in drinking water.



Water Supply Reliability

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 matters relating to the board letter and board meeting process and technology.

Work with the Chair of the Board, management, and staff regarding amendments to the Administrative Code, as applicable.

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

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



District Governance and Support

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.

Legislation

Workforce/Human Resources

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

Represent Metropolitan in:

- Pre-litigation employment claims;
- Employment litigation;
- California Public Employment Relations Board (PERB) matters;
- Grievances and hearing officer appeals.

Provide legal advice and support concerning:

- Metropolitan Memoranda of Understanding (MOU) with Metropolitan's Bargaining Units;
- Metropolitan Administrative Code 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 employees residing at Metropolitan's desert facilities;
- Equal Employment Opportunity (EEO) matters, including mediation of federal U.S. Equal Employment Opportunity Commission (EEOC) and state Department of Fair Employment and Housing (DFEH) complaints, as requested; and
- Misconduct matters and threat assessments, as requested.

Supervise consultant investigations concerning:

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

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

- The plan governance structure;
- The recordkeeper contract;
- Plan amendments; and
- Plan loans and death benefits.

Workforce/Human Resources

Real Property

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

- Negotiation and documentation of real property acquisitions and dispositions;
- Disposal of surplus real property;
- Leasing and licensing of Metropolitan property; and
- Grant and acceptance of easements and entry permits.

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

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

Work with RPDAM and Security Management Unit to enhance security of Metropolitan's property.

Provide assistance with annexation matters.

Participate in the Security Task Force.



Real Property

Finance

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

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.

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

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 the Board regarding financial disclosures.

Disputed Matters/Litigation

Represent Metropolitan in disputed matters.

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

Provide amicus support in litigation impacting Metropolitan's interests.

Provide support and advise on the government claims process, workers' compensation claims and litigation and settlements.

Continue to represent Metropolitan's interests in pending litigation, SWP and Bay-Delta related litigation regarding:

- DWR funding of the Delta Conveyance Project;
- Permits relating to the operation of the SWP;
- Delta Plan; and
- SWP contract.

Anticipated unknown new matters

- Government Code claims and tort litigation;
- CEQA issues;
- Employment matters;
- Construction-related litigation;
- Eminent domain and real property issues;
- Finance-related matters;
- Notices of Violation from Cal-OSHA/AQMD, fire departments and other regulatory entities;
- Rate litigation; and
- Other matters.

Disputed Matters/Litigation

Technology

Collaborate on information governance initiatives and policies with:

- Chief Sustainability Resiliency and Innovation Officer;
- Information Technology Group;
- Administrative Services;
- External Affairs; and
- 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 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; and
- 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, as needed.

Corporate Resources/ District Infrastructure

Provide legal support with respect to contracting for:

- Capital investment projects;
- Repair and replacement projects;
- Professional services; and
- 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 staff on construction, procurement, and professional services contracting and solicitations.

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

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

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; and
- Amendment and implementation of AVEK Groundwater Storage Agreement.

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

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:

- Monitoring Arvin-Edison Water Storage District's (Arvin-Edison) and Semitropic Water Storage District's (Semitropic) lawsuits against the manufacturers and distributors regarding 1,2,3-trichloropropane (TCP) in Arvin-Edison's and Semitropic's groundwater.

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; and
- Legislation and regulations.

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

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; and
- Other agencies, as appropriate.

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

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.

Training in new technologies, including 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; and
- Various substantive areas.

Develop and implement succession planning.

Provide an appropriate level of staffing.

Provide timely employee evaluations.

Legal Department Administration