



A typical pleading prepared by the Legal Department requires research, consultation, drafting, rewriting and finally filing with the court.

CHAPTER 5

Legal

The Legal Department represents Metropolitan, its board of directors, officers, and, on occasion, employees in litigation and administrative proceedings; renders legal advice on a variety of issues; prepares or reviews contracts; and monitors litigation, administrative proceedings, and state and federal legislative proposals that could affect Metropolitan.

Major Events

State Water Project

Metropolitan staff attorneys participated in litigation and helped guide strategy in cases alleging that the biological opinions and incidental take statements issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service for the operation of the Central Valley Project and SWP violate the Federal Endangered Species Act. After U.S. District Court Judge Oliver Wanger issued his ruling in *NRDC v. Kempthorne* in May 2007, invalidating the U.S. Fish and Wildlife Service's biological opinion for Delta smelt, staff attorneys participated in lengthy hearings on remedies. On April 16, 2008, Judge Wanger issued his summary judgment ruling in *Pacific Coast Federation of Fishermen's Association v. Gutierrez*, invalidating the biological opinion for salmonid species. Legal staff participated in planning and preparation for the consultations with the fishery agencies that laid the groundwork for new biological opinions.

Legal also provided legal advice regarding regulatory, legislative and scientific/technical projects that address threatened and endangered species issues in the Sacramento-San Joaquin Delta and analyzed possible enforcement actions against other stressors that adversely impact threatened and endangered species in the Delta.

Metropolitan and other SWP contractors filed a California Environmental Quality Act suit opposing a major expansion of the Sacramento Regional County Sanitation District's wastewater plant because the Sanitation District's Environmental Impact Report failed to address significant water quality impacts. Metropolitan staff and outside counsel for Alameda County Zone 7 divided argument and briefing of the plaintiffs' case. Following trial in October 2007, the court found in favor of plaintiffs on eight out of 11 CEQA claims and invalidated the EIR. The Sacramento sanitation district appealed in March 2008, and in April Metropolitan and the other plaintiffs filed a cross-appeal.

Legal staff successfully argued in the California Supreme Court for reversal of the Third District Court of Appeal's ruling in the Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, which had invalidated the EIR for the CALFED Program. In June 2007, the Supreme Court issued a unanimous decision overturning the Court of Appeal and ruled that the EIR fully complied with CEQA.

In *Alameda County Flood Control and Water Conservation District, Zone 7, et al. v. DWR*, a group of 14 SWP contractors filed suit against the state Department of Water Resources challenging the manner in which DWR allocates certain energy costs and revenues related to operation of the State Water Project. Metropolitan and 12 other SWP contractors intervened in the litigation. The parties were heavily engaged in discovery-related activities, which culminated in cross-motions for summary judgment in December 2007. After the court denied all of the parties' motions on May 8, 2008, the parties prepared for the first phase of trial, limited to contract interpretation issues.

Colorado River

On December 13, 2007, U.S. Secretary of the Interior Dirk Kempthorne and the governors' representatives for the Seven Basin States executed documents formalizing new operating criteria for Lake Powell and Lake Mead, allocations of shortages within the Lower Basin, and projects for storing water in Lake Mead. Secretary Kempthorne described the agreement as the most significant pact on the Colorado River since the 1922 Compact. The Legal Department

provided legal counsel and negotiation support and assisted in negotiating and developing related agreements that secured Metropolitan's right to Lake Mead storage.

In *Cadiz, Inc. v. Metropolitan*, Legal staff worked with outside counsel to defend an action seeking damages for Metropolitan's decision not to go forward with the Cadiz groundwater storage program. On October 4, 2007, the parties argued cross-motions for Summary Judgment/Summary Adjudication. The court's ruling granted Metropolitan's Motions for Summary Adjudication on four of the five causes of action.

Staff attorneys defended Metropolitan's interests in a series of cases challenging the Quantification Settlement Agreement by filing or responding to numerous pretrial motions, including demurrers, motions for intervention, motions for preliminary injunctions and other motions that narrowed the scope of the validation action.

Water Quality

Staff attorneys provided monitoring and advice regarding perchlorate and chromium contamination threatening Colorado River supplies. Legal also defended Metropolitan's interests in two cases (*San Gabriel Basin Water Quality Authority v. Aerojet-General; Aerojet v. Metropolitan* and *Orange County Water District v. Northrop Grumman Corp., et al.; Northrop Grumman v. Metropolitan, et al.*) alleging that Metropolitan contributed to contamination of groundwater through its importation and spreading of Colorado River water.

Metropolitan attorneys helped prepare a quagga mussel control plan to meet new statutory requirements and offered amendments to proposed legislation that will further address problems created by this invasive species.

Water Supply

Legal Department attorneys participated in the working group that developed the water supply allocation plan, which provides a formula for equitable distribution of available supplies in case of extreme water shortages within Metropolitan's service area. The allocation plan was

approved by the board in February 2008. Central Basin Municipal Water District filed litigation challenging the allocation plan in April 2008. Working with outside counsel, Legal prepared and filed the evidentiary record and filed motions for summary judgment and to dismiss Central Basin's CEQA claims.

Metropolitan attorneys participated in negotiating and drafting an amendment to the Arvin-Edison Water Storage District Agreement. The amendment funded improvements to Arvin-Edison's delivery system with Proposition 13 grant monies. In return, Metropolitan will gain increased quality of SWP supplies with water quality exchanges, reduced program costs, an expanded ability to receive return water in dry years and an increase in the program's total yield.

Legal Department attorneys participated in negotiation and drafting of water transfer agreements, including the agreement with the SWP Authority and other SWP contractors for 2008 water transfers. They represented Metropolitan in *Butte Environmental Council v. Richvale Irrigation District*, which challenged one of the water transfers.

Capital Projects

Legal represented Metropolitan in ongoing litigation and claims related to the Inland Feeder Project construction in San Bernardino County.

On July 23, 2007, the California Supreme Court rendered its decision in *Metropolitan Water District v. Campus Crusade for Christ, Inc.*, an eminent domain case brought by Metropolitan to acquire property for the Inland Feeder Project. At trial, Metropolitan won a favorable judgment awarding \$478,278 as just compensation for taking of the property. Campus Crusade had sought compensation totaling \$15.6 million. On appeal, the Court of Appeal reversed the judgment and ruled that Campus Crusade should have been allowed to present evidence of additional damages to the jury. The Supreme Court agreed that the jury should decide certain issues on damages and remanded the case for a new trial. The Legal Department, with outside counsel, prepared for retrial of this case.

Legal staff helped obtain entry permits and easements for construction of the Perris Valley Pipeline in Riverside County and resolved or advised on claims by the construction contractor. Staff filed three eminent domain actions and defended a nuisance action brought by a property owner affected by construction on the North Reach. They continued right-of-way acquisition for the San Diego Pipeline 6 Project, completing the remaining eminent domain action for the North Reach construction and obtaining access for alignment studies for the South Reach.

Legal completed negotiations with California Department of Parks and Recreation and provided legal assistance with the final EIR for the relocation and improvement of a secondary access road on the south side of the Diemer Water Treatment Plant, a portion of which runs through the Chino Hills State Park. Legal staff defended Metropolitan against a CEQA challenge to its EIR for the access road in *Hills for Everyone v. Metropolitan*.

Energy

Metropolitan attorneys participated in the complex stakeholder process for re-design of California's electrical system tariffs that resulted in the most significant upgrades and changes since deregulation in the 1980s. They submitted comments regarding treatment of Metropolitan's transmission facilities under the proposed tariff and assisted with analysis and planning for the re-designed electrical market.

Staff attorneys reviewed and prepared comments on proposed regulations under AB 32, California's Global Warming Solutions Act, including California Air Resources Board regulations concerning mandatory reporting of greenhouse gas emissions. Legal staff assisted with review of potential renewable energy projects and development of the solar energy facility under design for the Skinner Water Treatment Plant. Staff also assisted in the sale of renewable energy certificates originating from Metropolitan's small conduit hydro-electric generation. They supported Metropolitan's reporting and compliance with new electric reliability standards and suggested revisions to energy policy principles.

Human Resources

The Legal Department expanded its ability to provide advice and representation in personnel litigation, employee relations and administrative matters and handled most matters in-house. These included defending Metropolitan's interests in several matters before the Public Employment Relations Board; defending Metropolitan's interests in hearing officer appeal requests; providing investigation oversight for EEO claims; and advising on interpretation and implementation of bargaining unit MOUs with a focus on proper, uniform and equitable application. Staff attorneys defended and negotiated settlements in employment lawsuits and brought a civil action to recover damages for Workers' Compensation fraud against a former employee.

In *Cargill v. Metropolitan*, Legal provided oversight and directed implementation of the settlement agreement, assisting Human Resources with enrollment of individual class members eligible for retroactive CalPERS benefits.

Finance

Legal staff participated in the issuance of almost \$800 million in water revenue bonds and assisted with rates and charges, integration of the rate-setting and budgeting processes and other financial activities. As the credit markets began to decline, staff advised on the consequences of bond insurer and bank downgrades, prepared and filed disclosure documents and assisted with the replacement of standby bond purchase agreements and remarketing agents.

Other Activities

The Legal Department advised on proposed state and federal legislation and compliance with statutory and institutional requirements, such as the Metropolitan Water District Act and Administrative Code, the Brown Act, the Political Reform Act and the Public Records Act. Staff responded to numerous Public Records Act requests and administered the annual filing of economic interest statements by directors and designated employees in accordance with Fair Political Practices Commission filing requirements.

Metropolitan attorneys led a multi-departmental E-Discovery Task Force to develop a program for the preservation, retention and retrieval of electronic documents as required by court rules. They formalized procedures to preserve and retain documents that may be required for litigation.

Legal reviewed and approved procurement and professional contracts, developed an internal tracking system for procurement contracts and provided training on contract procedures and requirements for staff from other departments.