



# Update on Independent General Counsel

November 5, 2020  
JPB Board of Directors

# Background

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- JPB Board Resolution (August 6, 2020) accompanying Measure RR ballot placement contained amongst others, three key provisions:
  - The JPB Board shall appoint an auditor (and shall not have the same auditor as SMCTD) by January 15, 2021.
  - The JPB Board shall appoint an independent counsel (and shall not have the same counsel as any member agency ) by January 31, 2021 to represent the JPB, and until such time the law firm of Olson Remcho LLP shall be available to the Board for consultation upon request
  - The JPB Board will recommend a governance structure or procedures to the three Member Agencies no later than December 31, 2021.
- Board Ad Hoc committee (Bruins, Zmuda, Collins) appointed to address and recommend path forward on these provisions
  - 5 meetings held to date

# Status

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- Appointment of auditor
  - Projected award in January 2021
- Appointment of Independent General Counsel
  - For discussion today
- Development of governance recommendation by 12/31/21
  - Process discussion underway by Ad Hoc Committee

# Objectives of Independent Counsel Effort

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- Comply with language and intent of JPB Resolution
- Ensure the integrity, quality and continuity of JPB legal support
  - California and Commuter rail expertise is critical
- Development of recommendation for JPB consideration with respect to the acquisition of independent legal counsel

# Process

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- JPB retained expertise of Renee Marler to lead process to obtain independent counsel.
- Process to develop recommendation for Board consideration
  - Collect data on current JPB counsel services/needs
  - Evaluate market
  - Conduct peer discussions
  - Develop options for consideration

# JPB Legal Counsel-General Description

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- Services are provided to the JPB by Hanson Bridgett (HB) serving as general counsel and providing a diverse set of specialized practice areas.
  - special counsel hired when necessary if HB has a conflict or does not have the required expertise
- Hourly fee is \$400
  - In comparison, quotes for Special Counsel ranged from \$410 - \$729/hour
- Legal budget varies based on services required
  - Annual non-litigation budget for last 2 complete fiscal years
    - FY 19 \$2.25 million
    - FY 20 \$2.8 million

# JPB Legal Counsel-General Description

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- HB provides services in a diverse set of practice areas including:
  - Railroad regulatory, compliance, business practice, negotiation
  - Real property, eminent domain, TOD and development
  - Environmental law including CEQA/NEPA
  - Litigation,
  - Construction and procurement law
  - Finance/financing, insurance
  - Civil rights, labor, First Amendment

# Legal Service Scan

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- Initial scan to determine if a single firm can satisfy needs
  - HB provides a unique family of services.
  - Few comparable firms exist but are on the east coast and lack California expertise
  - Several firms provide subsets of required services



# Peer/Agency Research

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- Several agencies interviewed to determine approach to legal services.
  - Construction Authority
  - Multimodal Operating Entities
  - Commuter Railroads

# Peer/Agency Research (cont)

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- General themes
  - No single solution
  - Form of legal services provision results from organizational objectives
    - Financial
    - Practical
  - Practice for established commuter railroads is to hire in house legal staff, which had evolved over time
    - Supplemented by contractors with specialist firms

# Options for consideration (cont)

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- Several options developed to satisfy JPB requirements
  - Hire Special Counsel (not compliant with Resolution)
  - Hire Replacement firm for HB (procurement of a single firm not feasible)
  - Hire in-house general counsel (JPB lacks administrative structure to hire employees)
  - Hire contracted general counsel firm (with contracted other legal services-2 options)
- All options measured against JPB objectives and practical requirements

# Contracted General Counsel

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- Option 1 – Hire contracted general counsel to advise Board with executive management of other contracted legal services
- Option 2- Hire contracted general counsel to advise Board and manage other contracted legal services

# Recommendation

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- Option 2-Hire contracted general counsel to manage all contracted legal services
  - Single manager of all legal services
  - Provides coordination among various legal contracts
  - Provides good governance support for the JPB board
  - Provides support to JPB through governance discussions
  - Provides flexibility as agency evolves

# Transition

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- Any change from the current provision of legal services will require a thoughtful transition that:
  - Prioritizes support for on-going litigation and other critical activities
  - Retention of expertise and Caltrain-specific skills and knowledge

# Timing

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- Procurement of these services could proceed on the following timeline if direction is provided today
  - Finalize scope and RFP for review by Ad Hoc Process Committee and issue RFP - 2 weeks
  - Advertisement -3 weeks
  - Pre-proposal activities/proposals due -9 weeks
  - Appoint Board interview committee - January
  - Proposals/interviews-6 weeks
  - Contract negotiations-board award 3-6 weeks

# Next Steps

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- Develop and advertise RFP
- Continue discussion with Ad Hoc Committee
- Determine interview and evaluation process
- Appoint Board interview committee



# Discussion---

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