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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-7

February 14, 1997

To: Board of Directors (Legal & Claims Committee--Action)

From: *for* General Manager and
General Counsel

[Handwritten signatures]

Subject: **Authorize Filing of Amicus Curiae Brief in Appellate Litigation Involving the Use of Project Labor Agreements in California by Public Agencies**

RECOMMENDATION(S)

That the General Counsel, with the approval of the General Manager, be authorized to file an amicus curiae brief in the matter of *Associated Builders and Contractors, Inc., Golden Gate Chapter et al. v. San Francisco Airports Commission* (First Appellate District No. A076022) defending the use of project labor agreements by public agencies in California.

DETAILED REPORT

Metropolitan is currently involved in litigation with the Southern California Chapter of the Associated Builders and Contractors (ABC) regarding the District's use of a Project Labor Agreement (PLA) on the Eastside Reservoir Project. That action, filed last October, sought a court order directing Metropolitan to delete references to the Project Labor Agreement from the specifications for the P-1 Pumping Plant on the basis that such agreements violate competitive bidding requirements as well as the constitutional guarantees of free association and equal protection. Following a hearing in November, the court specifically found that, "The PLA does not conflict or impinge on the lowest 'responsible' bidder law. Nor does it violate the competitive bid statute, the Right of Free Association, equal protection of the laws, or the Labor Code." ABC has filed a notice of appeal from the trial court's decision.

Proceeding ahead of the District's case in the appellate process is the case of *Associated Builders and Contractors, Inc., Golden Gate Chapter v. San Francisco Airports Commission*, a matter currently pending in the First Appellate District in Northern California. There, ABC challenged the Commission's use of a Project Stabilization Agreement, the equivalent of the PLA used by Metropolitan, as a part of the planned expansion of the airport's passenger facilities. The challenge was based on the same legal theories asserted against Metropolitan, that the use of such agreements violates competitive bidding laws, state Labor Code provisions and constitutional rights of free association. The trial court denied ABC's request for a writ of mandate and ABC is appealing the decision.

Because the matter involving the Airport Commission will be the first time an appellate court has examined the issues involving the use of project labor agreements by public agencies, the ruling of the court will be of critical importance to public agencies, like Metropolitan, which are using such agreements on large public works projects. An initial favorable ruling in the San Francisco case would serve as an important precedent and improve Metropolitan's chances of prevailing on appeal. It is anticipated that the initial preparation of the brief would be done by Morgan, Lewis & Bockius, the firm which assisted the General Counsel in the defense of the case at the trial level. Because the issues are substantially the same in both cases, and have already been briefed by Metropolitan at the trial level, the additional work required to prepare the amicus brief should be minimal.

Due to the significance of this litigation to Metropolitan, it is requested that the General Counsel, with the approval of the General Manager, be authorized to file an amicus curiae brief with the Court of Appeal in the matter of *Associated Builders and Contractors, Inc., Golden Gate Chapter v. San Francisco Airports Commission*.