



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

April 30, 1998

To: Board of Directors (Legal and Claims Committee--Information)

From: General Counsel

M. Gregory Taylor

Subject: Legal Department Report for April 1998

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

This report discusses significant matters which the Legal Department was concerned with during the month of April 1998.

DETAILED REPORT

1. Recent developments of interest to Metropolitan

San Luis & Delta-Mendota Water Authority v. U.S. Department of Interior
Save San Francisco Bay Assn. v. U.S. Department of Interior

As reported earlier, each of these actions attack the Department of Interior's November, 1997 plan to implement the dedication of 800,000 acre-feet of Central Valley Project yield to fish and wildlife purposes as required by the Central Valley Project Improvement Act. The Save San Francisco Bay Assn. case has been transferred from the San Francisco Federal Court to Judge Wanger in the Federal District Court in Fresno and consolidated for all purposes with the San Luis & Delta-Mendota case which is presently before that same judge. Metropolitan and other State Water Contractors are reviewing their options with respect to participating in the litigation. The judge has set a deadline of May 7, 1998 to entertain motions to intervene. Your Board has authorized the General Counsel to intervene or otherwise seek to participate in the litigation.

2. Litigation to Which Metropolitan Is a Party

MWD v. All Persons Interested (Wheeling Rates Validation Action)

On April 9, 1998, Judge Kay ruled on defendants' motions for costs and attorneys' fees. Defendants had requested \$886,495.44 in fees and costs, but Judge Kay's ruling awarded only \$119,824.47. While the ruling was generally favorable to Metropolitan, counsel involved in the appeal of the validation action recommended appeal of this decision as well. Only a party which

prevails on the merits is entitled to receive costs, and until the appeal of the substantive issues is concluded the prevailing party or parties will not be finally determined. (See Board Letter 7-13.)

MWD and Department of Water Resources v. San Bernardino Valley Municipal Water District and Western Water Company

Metropolitan and the Department of Water Resources have brought complaints against defendants as a result of their efforts to sell state project water into Metropolitan's service area without consent. The causes of action are based upon violation of the state water contract and the California Constitution as well as a violation of the California Environmental Quality Act (CEQA) in regard to the agreement between San Bernardino Valley Municipal Water District (San Bernardino) and Western Water Company which provided for the sale. San Bernardino filed a demurrer seeking to have the CEQA cause of action dismissed alleging it failed to state facts sufficient to state a cause of action. The demurrer was heard in Sacramento County Superior Court on April 17, 1998. The Court denied the demurrer. Hearing on the merits of this cause of action is scheduled for July 31, 1998. In advance of the hearing, Metropolitan and the Department agreed to dismiss without prejudice the CEQA cause of action only against Western Water Company. Western Water has agreed to provide Metropolitan and the Department 30 days notice of any steps it intends to take in compliance with its obligations under the agreement between it and San Bernardino.

Associated General Contractors, San Diego Chapter (AGC) v. MWD

AGC's Motion for a Preliminary Injunction seeking to enjoin Metropolitan's further use of Project Labor Agreements (PLAs) on the Eastside and Inland Feeder Projects was denied following a hearing in San Diego on April 6, 1998. Judge Jeffrey Miller of the U.S. District Court ruled that AGC had failed to show a likelihood of prevailing on the issue of whether the PLAs are state laws preempted by the Employee Retirement Income Security Act of 1974 (ERISA). AGC is appealing the Court's decision. AGC's Complaint alleges that Metropolitan, as a state entity, may not include language in its bid specifications that requires contractors awarded work on the projects to adopt those portions of local collective bargaining agreements which require contributions to ERISA benefit funds. A hearing on Metropolitan's Motion to Dismiss the action was held on April 27, 1998, the court's decision is expected shortly.

3. Resource Matters

State Water Resources Control Board Hearings

The State Water Resources Control Board (SWRCB) held a two-day workshop on April 21 and 22 to (1) discuss procedures for its upcoming water rights hearings, and (2) to hear reports on proposed settlement agreements for implementation of its May 1995 Water Quality Control Plan flow and other requirements. At the workshop, joint presentations were made by export contractors and upstream water users on settlement agreements regarding the San Joaquin River (also known as "VAMP"), Yuba County Water Agency, and East Bay MUD and proposed agreements with the Glen-Colusa Water District and a group of Lower Sacramento River water districts. The Department of Water Resources, which must approve the agreements along with the Bureau of Reclamation, supported each of the proposed agreements in concept. The

Department of Interior supported the settlement negotiation process and presented a set of criteria that it would use to determine whether to support any particular agreement. Environmental groups and certain upstream parties raised a variety of concerns with respect to particular agreements or the process in general. Most parties who spoke on the issue of the SWRCB's decision to restructure the hearing process to accommodate potential settlements were supportive.

California Electric Industry Restructuring

The California Independent System Operator and California Power Exchange formally commenced operations on April 1, 1998. Due to the continuation of operations in accordance with the terms of Metropolitan's existing power contracts, Metropolitan has not been adversely affected by the restructured environment. Metropolitan has continued to file comments and motions to intervene at the Federal Energy Regulatory Commission on newly filed ISO Tariff Amendments and Agreements. Additionally, the ISO's Grid Management Charge settlement offer was certified as an uncontested settlement by an Administrative Law Judge this month. Metropolitan participated with other parties in the negotiation of the terms of the settlement. The FERC is expected to soon approve the settlement, which establishes a GMC rate for 1998, and a process for determining the rate in subsequent years.

4. Claims

None to report.

5. Financing

None to report.

6. Administrative Matters

None to report.