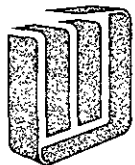


APPROVED
by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

JAN 14 1992

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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA


EXECUTIVE SECRETARY

December 17, 1991

To: Board of Directors (Legal and Claims Committee--Action)
Board of Directors (Organization and Personnel Committee--Action)

From: General Counsel

Subject: Azusa Landfill Litigation: Appellate Counsel

Report

Two years ago, Metropolitan filed an action to rescind the State Water Resources Control Board's (SWRCB) approval of the Azusa solid waste landfill expansion. That action has been successful, with SWRCB issuing an order on July 24 rejecting the landfill expansion. However, the landfill operator, Azusa Land Reclamation Company (commonly referred to as BFI), has indicated it will appeal the superior court's September 24 ruling that upheld SWRCB's rejection of the expansion.

The appeal will focus on the court's ruling that the California Environmental Quality Act (CEQA) exempts SWRCB from preparing an environmental impact report (EIR) before it rejects projects such as the landfill expansion. While BFI has filed a separate action raising several additional challenges to SWRCB's July 24 rejection order, the court has stayed that action in order to obtain a final appellate ruling on this CEQA issue.

The appeal thus has important significance. If BFI should prevail, SWRCB would be forced to invalidate its rejection order, prepare an EIR on the landfill expansion, and hold additional proceedings before ruling on the expansion. That process could take more than a year and involve extensive participation by Metropolitan and others. It could also set a statewide precedent greatly expanding project rejection burdens on state and local agencies.

Metropolitan initiated this litigation in cooperation with Upper San Gabriel Valley MWD (Upper District), the Main San Gabriel Basin Watermaster (Watermaster), and the Environmental Defense Fund, because the landfill expansion threatens serious contamination of (1) a major local

groundwater supply within Metropolitan's service area and (2) important underground storage and distribution capacity for water imported through the State Water Project. Metropolitan has rights to store 165,000 acre-feet of imported water in the basin, and currently has about 40,000 acre-feet in storage.

In preparation for BFI's appeal, Watermaster and Upper District have agreed with Metropolitan to retain the same appellate counsel (Horvitz & Levy) that successfully represented Metropolitan, Upper District and Watermaster in reversing SWRCB's original approval of the landfill expansion. Under that arrangement, Metropolitan would pay half the cost and the local water supply agencies would pay the balance. That is the same allocation which the General Manager has used in sharing costs for technical consultants on the Azusa Landfill problem. It is also significantly lower than the 66 percent Metropolitan paid of the previous appeal costs.

Metropolitan's share of the costs for defending against BFI's appeal is thus expected to total between \$25,000 and \$40,000 based on Horvitz & Levy's estimated total fees of \$50,000 to \$75,000. That estimate is based on a fee schedule ranging from \$215 to \$350 per hour, which is the same range used in the previous appeal.

The action recommended by this letter is exempt from CEQA because it involves participation in action taken by a regulatory agency to protect a natural resource.

Board Committee Assignments

This letter is referred for action to:

The Legal and Claims Committee because of its responsibilities to study, advise, and make recommendations with regard to litigation and claims brought by or against Metropolitan, pursuant to Administrative Code section 2461(a); and

The Organization and Personnel Committee because of its responsibilities to study, advise, and make recommendations with regard to the terms and conditions of employment of all special counsel, pursuant to Administrative Code section 2471(g).

Recommendation**LEGAL AND CLAIMS AND ORGANIZATION AND PERSONNEL COMMITTEES FOR ACTION.**

It is recommended that the General Counsel be authorized to execute an agreement with Upper San Gabriel Valley MWD and the Main San Gabriel Basin Watermaster committing Metropolitan to pay half the cost, but not more than \$50,000, of retaining the firm of Horvitz & Levy as special appellate counsel for the purpose of defending the September 24, 1991 ruling of the Los Angeles Superior Court in Metropolitan Water District et al. v. SWRCB (LASC No. C743098), affirming SWRCB rejection of the Azusa solid waste landfill expansion.


Fred Vendig

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