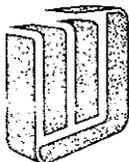


*Dorwin E. Duff*  
Executive Secretary



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

January 31, 1992

To Board of Directors  
From General Counsel  
Subject Legal Department Report for January 1992

This report discusses significant matters with which the Legal Department was concerned during January 1992.

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California III (Indian Boundary Litigation)

The Special Master, in late January, denied the motion of the United States to reconsider his prior ruling in favor of Metropolitan and the other state parties, precluding the United States from seeking additional water rights from the Colorado River for the Fort Yuma Indian Reservation. The United States had been seeking approximately 51,000 acre-feet of water a year for this reservation. It is uncertain whether the United States will seek an immediate appeal to the United States Supreme Court or whether it will await the trial and recommendation by the Special Master regarding the Colorado River Indian Reservation before seeking the court's review. Settlement discussions with the Fort Mojave Indian Reservation are continuing.

2. San Francisco Bay/Delta Hearings

The State Water Resources Control Board (SWRCB) held a workshop on January 6, 1992, to begin discussing the approach it will take in the water rights phase of the Bay/Delta proceedings. Issues involved include which parties should be involved in the water rights phase; how traditional water rights priorities will be handled; how public trust, public interest, and reasonable use requirements will be applied; and identifying a practical and appropriate procedure. Neither SWRCB nor its staff made a presentation or otherwise indicated its views on any of the issues involved.

3. Golden Gate Audubon v. SWRCB

On January 23, 1992, the State Water Contractors (SWC) requested that Judge Ford of the Sacramento Superior Court determine the scope of review in this action to overturn the State Water Resources Control Board's (SWRCB) Water Quality Control Plan for the Bay/Delta estuary (Plan). SWRCB, through the Attorney General, supported the motion. This is a critical issue because the determination of the scope of review will guide the court's review of the Plan. SWC's (and SWRCB's) position is that the Plan is a "quasi-legislative" document, subject to deferential review to determine only whether it was arbitrary, capricious, or lacking in any evidentiary support. Plaintiffs contend that the Plan is a "quasi-adjudicatory" document, authorizing the court to independently review SWRCB's factual findings. Additionally, if the court determines that the Plan is subject to review as a quasi-legislative document, plaintiff's cause of action asserting that the Plan is invalid because of illegal "ex parte" contacts will likely become untenable. A hearing on this issue has been set for February 28, 1992.

4. Yochim v. Pebley, MWD et al.

At a mandatory settlement conference of January 7, 1992, Metropolitan settled this matter with plaintiff for the sum of \$5,000. This personal injury action arose out of a two-vehicle collision on November 28, 1986, at the intersection of Auld Road and Van Gaale Lane in the vicinity of Lake Skinner. This is an uncontrolled intersection of a county dirt road and a private dirt road. Metropolitan had just completed construction activities in the vicinity of the intersection prior to the accident. Plaintiff suffered severe internal injuries and sued Metropolitan, Metropolitan's contractor, the other driver, and others. Plaintiff originally demanded \$600,000 in total to settle the matter but, after losing at an arbitration hearing in 1991, has now accepted \$10,000, with \$5,000 from Metropolitan. This ends this matter.

5. Hubert Goldmann et al. v. City of Hemet, County of Riverside, Riverside County Flood Control District, Metropolitan Water District of Southern California et al.

On January 13, 1992, Metropolitan was served with a complaint filed in Riverside Superior Court by 30 residents of Riverside County. Plaintiffs seek to recover damages allegedly suffered to their real and personal property by flooding in

February and March 1991. Plaintiffs allege that the work performed on the San Diego Canal caused or contributed to the flooding. The complaint contains causes of action of inverse condemnation, nuisance, and negligence-property damage. The General Counsel will take all steps necessary to protect Metropolitan's interests in this matter.

6. MWD v. Jose L. LaMadrid and Emile Moeckel

On December 26, 1991, Metropolitan filed a complaint in Riverside Superior Court against Jose L. LaMadrid and Emile Moeckel. The complaint contains a cause of action for negligence. The complaint also seeks to recover workers' compensation benefits provided to two Metropolitan employees as a result of an automobile accident for which defendants are alleged to be at fault.

B. Proceedings of Interest to Metropolitan

1. Endangered Species Act Developments

Proposed Listing of the Delta Smelt

The United States Fish and Wildlife Service (Service) held public hearings in Sacramento, Santa Monica, and Visalia to hear comments on its proposal to list the Delta smelt as a threatened species under the federal Endangered Species Act. Approximately 75 individuals and entities provided oral comments at the hearings and a number of others submitted written comments. The State Water Contractors and Metropolitan provided written and oral comments identifying weaknesses in the data supporting the proposed listing and describing social and economic impacts that could occur if the smelt is listed. The Service is required to determine whether to list the Delta smelt by October of this year, although it may delay the listing for an additional six months if it determines that there is significant dispute in the evidence. The Delta smelt spends its entire life in the Sacramento/San Joaquin Delta and a decision to list it could have a significant impact on how and when the State Water Project pumps are operated. (See the discussion of the winter run salmon below.)

2. Winter Run Salmon "Taking" Litigation

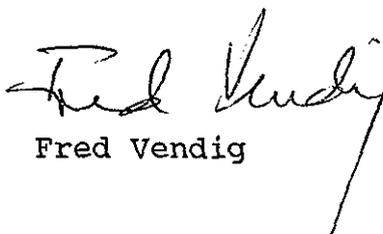
In two separate cases, courts have been asked to completely prohibit diversions from the Sacramento River to protect the endangered winter run Sacramento River salmon. In a case involving the Glenn-Colusa Irrigation District, a

federal district court absolutely prohibited the district from diverting water from the Sacramento River from July 15 to November 30 each year because diversions during that period result in the "taking" of winter run salmon. The court noted that the potential impact on the district of prohibiting irrigation during those four months was irrelevant under the Endangered Species Act; because the diversions killed salmon, and the district had not obtained a "taking permit."

In a second case, involving the Anderson-Cottonwood Irrigation District, a state court declined to prohibit pumping by the district because, according to the court, the killing of salmon incidental to an otherwise legal activity is not a "taking" under state law. The Department of Fish and Game, which brought the action, has appealed. In a separate, but related, action the United States Fish and Wildlife Service is seeking to impose a fine under the federal act of more than \$700,000 on Anderson-Cottonwood for its taking of winter run salmon.

C. Other Matters

None.



Fred Vendig

FV:gld  
Monthly