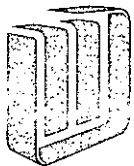


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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Secretary

March 31, 1992

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

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

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California III

In early March 1992, Metropolitan, along with the other State Parties, filed a motion for summary judgment regarding the Colorado River Indian Reservation. That motion seeks a ruling from the Special Master precluding the United States on behalf of the reservation and the tribe itself, from seeking additional water rights on the theory that the reservation's western boundary has been previously determined in other litigation. Alternatively, the motion seeks a determination that, as a matter of law, the western boundary is the Colorado River in its last natural position.

2. Azusa Landfill Litigation (BFI v. SWRCB)

On March 30, 1992, Metropolitan joined with the Main San Gabriel Basin Watermaster (Watermaster), Upper San Gabriel Valley MWD (Upper District), and Environmental Defense Fund (EDF) in opposing a request by the City of Azusa (City) to intervene in the case filed last year by Browning Ferris Industries (BFI) challenging the State Water Resources Control Board's (SWRCB) 1991 order rescinding the 1988 permit for expanding the Azusa landfill. The landfill lies mostly within the City and it seeks to intervene on behalf of BFI. The City asserts that SWRCB improperly failed to prepare an environmental impact report (EIR) when it rescinded the 1988 permit and that rescinding the permit disrupts the City's plan for reclaiming the sand and gravel pit in which the landfill is located.

The landfill also lies within a critical groundwater recharge area of the Main San Gabriel Basin. SWRCB rescinded the landfill permit after Metropolitan joined with the Watermaster, Upper District, and EDF in litigation that resulted in the appellate courts reversing a 1989 SWRCB approval of the landfill expansion.

The court has previously allowed Metropolitan, Upper District, Watermaster, and EDF to intervene on behalf of SWRCB since they had initiated the litigation against the landfill expansion. The case is presently stayed pending completion of BFI's appeal in those cases. A hearing on the City's motion is set for April 6, 1992.

### 3. San Gabriel Basin Conjunctive Use Program

On March 19, 1992, a member of the Legal Department, Metropolitan's Director of Resources, and a member of his staff met with the Chairman, Executive Officer, and Engineer of the Main San Gabriel Basin Watermaster, to develop a process for drafting a conjunctive use agreement that would allow implementation of Metropolitan's proposal to upgrade its existing groundwater storage program. The drafting process includes close coordination with Metropolitan's member agencies in the basin.

### 4. State Water Resources Control Board Hearing on Proposals to Relax Bay-Delta Standards to Help Implement Measures to Protect Winter-Run Salmon

On March 3 and 19, 1992, the State Water Resources Control Board (SWRCB) heard testimony on proposals to relax certain Delta protective standards in order to help implement measures to protect the endangered winter-run Sacramento River salmon. As reported below, the operations of the Central Valley Project (CVP) and State Water Project (SWP) have been modified this year as required by the National Marine Fisheries Service (NMFS) to help protect the winter-run. Among the operational constraints required by NMFS are measures that will make it more difficult to meet salinity standards for Suisun Marsh and the Contra Costa Canal. This could require additional outflow for salinity repulsion, reducing the water available for export by the projects. It has been proposed that certain Suisun Marsh standards be suspended and that the lower of two standards for Contra Costa Canal be relaxed in order to reduce the impacts on the export projects and to retain water for the purpose of lowering river temperatures for

salmon later in the year. SWRCB has not yet made a decision on these proposals.

B. Proceedings of Interest to Metropolitan

1. Los Angeles Regional Water Quality Control Board Basin Plan

On April 1, 1992, Metropolitan joined with the Main San Gabriel Basin Watermaster, Upper San Gabriel Valley MWD, Three Valleys MWD, and others in submitting a brief to the Los Angeles Regional Water Quality Control Board (Board) supporting its proposal to add a prohibition to its Basin Water Quality Control Plan, prohibiting any new or expanded solid waste landfills in sand or gravel mining pits within the Los Angeles or Ventura counties region. The Board has scheduled an April 20 hearing on this proposal.

2. Nevada Pumped Storage Project

On March 26, 1992, Metropolitan filed comments with the Federal Energy Regulatory Commission (FERC) on an application by Mead Energy Company for a preliminary permit to study placing a 1,000 megawatt pumped storage on the Arizona side of Lake Mead. Metropolitan urged that any permit be conditioned on the applicant obtaining an appropriate water use entitlement consistent with the Law of the River, and on the proposal not jeopardizing the purposes for which the United States built Lake Mead, including water conservation, flood control, and hydropower generation at Hoover Dam. If granted, the permit would allow a three-year study of the feasibility of the project. A separate application for a license would need to be filed to get authorization to build and operate the proposed facility.

3. National Marine Fisheries Service Jeopardy Opinion Regarding the Endangered Winter-run Sacramento River Salmon.

The National Marine Fisheries Service (NMFS) has issued a "jeopardy opinion" under the federal Endangered Species Act which sets out "reasonable and prudent alternatives" which the Bureau of Reclamation must follow in operating the Central Valley Project during 1992 to protect the endangered winter-run Sacramento River salmon. These alternatives also will have an impact on the Department of Water Resources' operation of the State Water Project. The opinion also included an "incidental take statement" which

authorizes the CVP and SWP to continue operations consistent with the NMFS alternatives, even though some salmon may be harmed thereby. The alternatives include closure of the Delta Cross Channel Gates, maintenance of lower temperatures and minimum flows in the upper Sacramento River and closure of the Suisun Marsh Salinity Control Gates. Each of these measures could reduce the amount of water available for export by the CVP and SWP.

C. Other Matters

1. Emergency Water Bank

A member of the legal staff participated with the General Manager's staff in the negotiation of the terms and conditions for the 1992 Emergency Water Bank established by the Department of Water Resources. The bank is intended to provide water to both urban and agricultural uses able to demonstrate a "critical need" as a result of reduced supply reliability due to the continuing drought.

2. Negotiation re WCT Building Lease

Members of the legal staff, special counsel, and the General Manager's staff negotiated a letter agreement with the WCT Building tenant improvement construction contractor, Dinwiddie Construction Company, which provides that Dinwiddie will obtain financing for the cost of construction for which financing Metropolitan will issue a guaranty, a construction contract will be signed by either the owner or Metropolitan, and Dinwiddie will return to work within days of receiving disbursement of the financing. The owner, which had originally agreed to sign this agreement, now refuses based upon the appointment of a receiver for the building, and Metropolitan has yet to receive and review the financing documents. If the three major conditions outlined above are not satisfied by April 13, the agreement with Dinwiddie will terminate. Additionally, Metropolitan met with representatives of a company which is considering investing in the WCT. Such representatives requested that Metropolitan concede certain rights under the lease, which request was denied.

  
Fred Vendig