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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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of the Board of Directors of
The Metropolitan Water District
of Southern California
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Barend E. Duff
Executive Secretary

May 29, 1992

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

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

A. Proceedings in Which Metropolitan Is a Party

1. San Gabriel Basin Conjunctive Use (Upper San Gabriel Valley MWD v. Alhambra et al.)

A member of the legal staff participated with members of the General Manager's staff in meetings to develop agreements that would be needed to implement a San Gabriel Basin conjunctive use program.

2. Santa Margarita River System (U.S. v. Fallbrook PUD)

A member of the legal staff participated with members of the General Manager's staff in a meeting with the Watermaster for the Santa Margarita River System adjudication regarding construction of Domenigoni Reservoir.

The meeting addressed development of a memorandum of understanding to assure the federal district court that Reservoir operations will not impair downstream water rights adjudicated in U.S. v. Fallbrook PUD. Metropolitan became a party to that adjudication in 1975 when the court approved a similar agreement for the operation of Skinner Reservoir in another area of the River System.

3. Golden Gate Audubon Society v. SWRCB

On May 29, 1992, Judge Ford of the Sacramento Superior Court heard argument on two motions in the above case, in which a group of environmental interest groups are seeking to overturn the State Water Resources Control Board's (SWRCB) May 1991 Water Quality Control Plan for the Bay/Delta (Plan).

The first motion, brought by the State Water Contractors (SWC), Metropolitan, and a number of other individual contractors, seeks a determination of the proper scope of the court's review of the Plan. This is a critical issue because the determination of the scope of review will guide the court's review of the Plan. The contractors' position (supported by SWRCB and the Department of Water Resources) is that (1) 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, and (2) because it is a quasi-legislative document, plaintiffs' assertion that the Plan is invalid because of illegal "ex parte" contacts is untenable.

Plaintiffs' motion seeks orders (1) adding some 65,000 pages of documents to the hearing record; (2) barring counsel representing SWC and Metropolitan from participating in depositions in the action; and (3) compelling deposition answers and documents that SWRCB has withheld on the basis of the "deliberative process" privilege.

A decision by the court may be available to report to the Board at its June meeting.

4. San Francisco Bay/Delta Hearings

On May 8, 1992, the State Water Resources Control Board (SWRCB) issued its notice of public hearing to consider interim water rights actions to protect the Bay/Delta Estuary. Twelve days of hearings have been scheduled, beginning June 22, 1992 and ending July 23, 1992. As expected, the hearing is described as an "enforcement" proceeding and will include consideration of major water users other than the state and federal water projects. Staff has been preparing testimony and exhibits documenting the need for, and efficient use of, Delta water in Metropolitan's service area and has been working with the State Water Contractors (SWC) to develop a general SWC strategy, proposed reasonable protection measures, and legal arguments. Additionally, on May 26, 1992, staff attended a SWRCB workshop held to discuss procedural and other questions in advance of the interim standards hearings.

5. Metropolitan Water District v. Dale W. Long et al. (Riverside County Superior Court No. 218541)

On May 6, 1992, the above entitled action was filed in the superior court for Riverside County to condemn a fee parcel and an existing appurtenant easement parcel required for

a portion of the Eastside Reservoir project, pursuant to resolution of necessity adopted by the Board at its meeting on April 14, 1992.

6. Herrera v. MWD and John Lopez

Metropolitan and a Metropolitan employee, John Lopez, were served with a complaint filed in Los Angeles Superior Court by Enrique Herrera claiming personal injuries arising out of an accident on October 1, 1990. Plaintiff claimed that he was struck by Mr. Lopez's automobile while he was walking his bicycle within a crosswalk. Metropolitan and Mr. Lopez claimed that Mr. Herrera was riding his bicycle down the wrong side of the street when he struck Mr. Lopez's vehicle while Mr. Lopez was making a right hand turn. There were no third party witnesses to the accident, and the accident reconstructionist retained by Metropolitan determined that the physical evidence was inconclusive.

Based upon stipulation of the parties, the matter was ordered to binding arbitration. The arbitration took place on April 27, 1992. Plaintiff sought to recover approximately \$130,000. The arbitrator found Metropolitan and Mr. Lopez to be 80 percent negligent and plaintiff to be 20 percent negligent. The arbitrator awarded plaintiff the net amount of \$32,628.00.

7. Camile Salha v. MWD et al.

On May 14, 1992, Metropolitan was served with a complaint filed in Orange County Superior Court by Metropolitan employee Camile Salha. Plaintiff claims damages arising out of breach of the covenant of good faith and fair dealing, discrimination, intentional infliction of emotional distress, negligence, negligent misrepresentation, and negligent infliction of emotional distress. Plaintiff claims the damages were a result of actions taken during his employment from 1987 to the present. The General Counsel will take all steps necessary to protect Metropolitan's interests in this matter.

8. Rosales v. MWD and Means

On May 18, 1992, Metropolitan was served with a complaint filed in Orange County Superior Court by Noemi Rosales, Ruth Rosales, and Abi Rosales claiming personal injuries arising out of an automobile accident involving a Metropolitan employee on October 14, 1991, at the intersection of Newport Boulevard and 26th Street in Newport Beach,

California. Plaintiffs' injuries apparently consisted of soft tissue damages. The General Counsel will take all steps necessary to protect Metropolitan's interests in this matter.

9. Tribolet v. County of Riverside

On May 7, 1992, Metropolitan was served with a cross-complaint for indemnity filed in Riverside County Superior Court by Eugene Tribolet. The underlying complaint, in which Metropolitan is not a defendant, involves an automobile accident in April 1990 on El Sobrante Road in Riverside County, California. Cross-complainant contends that if he is found liable for that accident, he is entitled to indemnity from Metropolitan, because Metropolitan owned land from which water ran onto El Sobrante Road, thereby causing or contributing to the accident. The General Counsel will take all steps necessary to protect Metropolitan's interests in this matter.

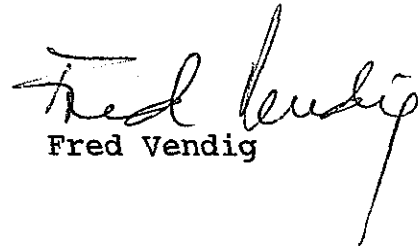
B. Proceedings of Interest to Metropolitan

Natural Resources Defense Counsel v. Patterson
(Friant Dam Contract Renewals)

Judge Lawrence Karlton of the United States District Court for the Eastern District of California has denied defendants' motion to dismiss one of the causes of action in the above matter on the grounds of federal preemption. Natural Resources Defense Counsel brought this action to enjoin the Bureau of Reclamation (Bureau) from renewing contracts to supply water from the Friant Dam unit of the Central Valley Project (CVP), alleging violation of several environmental statutes. One of the causes of action asserted that the Bureau must comply with California Fish and Game Code section 5937, which requires the owner of a dam to allow sufficient water to pass through or around the dam to keep in good condition any fish that may exist below the dam, before renewing the contracts. Defendants Bureau and a number of Friant contractors argued this cause of action should be dismissed because the Bureau was not bound by that state statute in the operation of the CVP. Judge Karlton denied the motion, holding that section 8 of the Reclamation Act requires the Bureau to comply with all state laws "relating to the control, appropriation, use or distribution of water used in irrigation," including section 5937.

C. Other MattersWCT Building Lease

The owner of the WCT Building, JCG Finance Company, Ltd. (USA), filed for bankruptcy under Chapter 11 on May 8, 1992. This had the effect of staying Metropolitan's notice of termination of the WCT lease which otherwise would have taken effect on May 15, 1992. Metropolitan will submit its creditor's claims against JCG in bankruptcy court and move for a court order compelling JCG's acceptance or rejection of the lease by a date certain. On May 18, 1992, Metropolitan was served with two Government Code claims from Dinwiddie Construction Company, the tenant improvement contractor, seeking recovery of its construction costs. Metropolitan has commenced settlement negotiations with Dinwiddie. Meanwhile, members of the General Manager's staff, the General Counsel's staff, Metropolitan's broker and its special counsel continued to meet with representatives from Two California Plaza to negotiate a lease for approximately 342,000 square feet of office space.


Fred Vendig

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