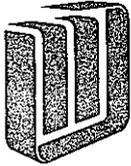


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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Baron E. Duff* 7-9  
EXECUTIVE SECRETARY

June 15, 1992

To: Board of Directors (Legal and Claims Committee--Action)  
From: General Counsel  
Subject: Participation of Deputy General Counsel James Roberts in Golden Gate Audubon Society et al. v. SWRCB

Report

As part of their case to overturn the State Water Resources Control Board's (SWRCB) Water Quality Control Plan for the Bay/Delta Estuary (Plan), plaintiffs in Golden Gate Audubon Society et al. v. SWRCB have asserted that ex parte contacts between SWRCB and representatives of the State Water Contractors and Metropolitan require invalidation of that Plan. SWRCB did, in fact, solicit input from a variety of interests, including the environmental groups who are plaintiffs in this action as well as water supply interests. It is our view that these contacts were proper.

Plaintiffs, however, still plan to conduct discovery concerning those ex parte contacts and have indicated that they will depose, among other Metropolitan employees, Deputy General Counsel James Roberts. Mr. Roberts, as a member of the General Counsel's staff, has represented Metropolitan in the Bay/Delta proceedings since they began in 1987, and is representing Metropolitan's interests in this litigation. As a result of the proposed discovery, there is a remote possibility that Mr. Roberts could become a witness in the case.

In cases where an attorney may become a witness, particularly when a case is tried before a jury, there is a chance that an attorney's credibility may become an issue, and the attorney's effectiveness as an advocate may be adversely impacted. Therefore, when a case in which an attorney may testify is tried before a jury, the Professional Rules of Conduct require that a client give informed consent to its continued representation by the attorney/witness and a declaration evidencing informed consent must be filed with the court.

The purpose of this letter is to inform the Board of the slight potential that Mr. Roberts could become a witness

and to recommend that the Board consent that he continue to represent Metropolitan in this action.

This recommendation is based, in part, on the fact that there is little likelihood that Mr. Roberts will in fact become a witness in this matter. In any case, the possibility that the case will be tried by a jury instead of a judge is remote; actions attacking the decision of an administrative body (such as SWRCB) are almost always tried before a judge. Finally, because Mr. Roberts is co-counsel with attorneys representing the State Water Contractors' organization, he would not have to argue or otherwise address issues relating to his potential involvement as a percipient witness, even if those issues did arise.

The recommendation that Mr. Roberts continue to represent Metropolitan is also based on the fact that he has been intimately involved in all facets of the Bay/Delta proceedings and the present litigation. He is the only Metropolitan attorney who has been directly involved and is among the few attorneys familiar with the record and the law on which the Plan being challenged in this action is based. It is my judgment that the benefit derived from his knowledge and experience outweigh the remote potential adverse impact on his effectiveness as an advocate which could result if he were to become a percipient witness.

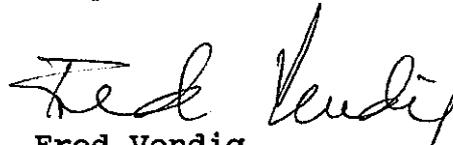
#### Board Committee Assignment

This letter is referred for action to the Legal and Claims Committee because of its authority to study, advise and make recommendations with regard to litigation and claims brought by or against the District, pursuant to Administrative Code Section 2461, subdivision (a).

#### Recommendation

#### **LEGAL AND CLAIMS COMMITTEE FOR ACTION.**

That the Board consent that Deputy General Counsel James Roberts continue to represent Metropolitan in Golden Gate Audubon Society et al. v. SWRCB.

  
Fred Vendig