

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

July 31, 1992

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

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

A. Proceedings in Which Metropolitan Is a Party

1. San Francisco Bay/Delta Hearings

The State Water Resources Control Board (SWRCB) completed 14 days of hearings in its proceeding to determine whether "interim standards" should be adopted to protect fish and wildlife in the Bay/Delta Estuary. The District, as part of the State Water Contractors (SWC), presented testimony and exhibits on the water supply needs of Southern California, as well as potential environmental and economic impacts of reductions in Delta supplies to the area. The District also prepared and filed an initial legal brief and is working with other SWC lawyers to prepare a closing brief. SWRCB anticipates releasing a draft decision for review and comments by October 1, 1992, and adopting a final decision by the end of the year.

2. San Gabriel Basin Conjunctive Use

A member of the Legal Department assisted the General Manager's staff in meetings regarding development of a District conjunctive use program for storing imported water in and extracting water from the San Gabriel groundwater basin, with:

A. The Main San Gabriel Basin Watermaster as part of an ongoing effort to develop an agreement that would allow implementation of District's proposed program, under the provisions of the judgment in Upper San Gabriel Valley MWD v. Alhambra; and

B. Representatives of the San Gabriel Basin Industrial Coalition regarding the relationship of District's proposed program to the U.S. Environmental Protection Agency's remedial program for removing hazardous substances released into the Basin, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

3. Harrison v. MWD et al.

This personal injury action, set for trial August 10, 1992, has been settled for the sum of \$10,000 by the District. This case arose out of a bicycle versus truck accident of April 14, 1990, wherein the plaintiff bicyclist, an eight-year-old boy, was struck by a pick-up truck driven by a third party while on the District's patrol road for the San Diego Pipelines No. 1 and No. 2 in the Temecula, California area. For some months before the accident, residents in the area had been requesting of the District and the property owner that the road be gated to prevent use of the road as a shortcut between paved highways. It was subsequently gated by the owner. Plaintiff suffered a broken femur and permanent facial scarring as a result of the accident. The total amount of the settlement is \$50,000 with \$35,000 to be paid by the truck driver, \$5,000 by the property owner, and \$10,000 by the District. This settlement is still subject to the trial court's approval because plaintiff is a minor. It is anticipated that approval will be obtained prior to the currently scheduled trial date.

4. Noemi Rosales et al. v. MWD et al.;
Joe Rosales et al. v. MWD et al.

On May 18, 1992, the District was served with a complaint filed in Orange County Superior Court by Noemi Rosales, Ruth Rosales, and Abi Rosales. On July 6, 1992, the District was served with a complaint filed in Orange County Superior Court by Joe Rosales. The complaints seek damages for personal injury and property damage. The plaintiffs claim they were injured in an October 14, 1991 automobile accident involving a District employee. The General Counsel will take all steps necessary to protect the District's interests in these matters.

B. Proceedings of Interest to Metropolitan

1. Ward Valley Litigation

The Legal Department assisted the General Manager's staff, in reviewing pleadings filed the week of July 20 with the California Supreme Court to expedite opening of the Ward Valley Low-Level Radioactive Waste Dumpsite located 20 miles west of the Colorado River. The District is currently reviewing reports regarding the containment integrity of the dumpsite.

The Supreme Court has transferred the matter (American College of Nuclear Physicians et al. v. Health and Welfare Agency, etc.) to the Court of Appeal in Sacramento. The litigation consists of three writ petitions to require the Department of Health Services (DHS) to proceed with issuing a final license for the dumpsite by the end of this year without holding adjudicatory hearings which DHS is planning as a result of a Legislative Counsel Opinion and related proceedings before the California Senate. DHS and the U.S. Bureau of Land Management issued a joint final environmental impact report/statement on the dumpsite last year, and DHS has held public hearings on a draft license for the facility.

2. Sierra Club Legal Defense Fund 60-Day Notice

On July 30, 1992, the Sierra Club Legal Defense Fund served the United States Environmental Protection Agency (EPA) with a "60-day notice" of its intent to sue EPA for its failure to adopt its own standards for the Bay/Delta Estuary. Such notice is required prior to filing an action against EPA under the federal Clean Water Act (CWA).

Sierra Club asserts that EPA is required to adopt Bay/Delta standards because it has rejected the Water Quality Control Plan (Plan) adopted by the State Water Resources Control Board (SWRCB) for the Bay/Delta Estuary. The CWA does require state water quality standards to be submitted to EPA for its review and, if it does not approve the standards, EPA is authorized to adopt its own standards. However, EPA rejected SWRCB's Plan primarily because it did not include freshwater outflow requirements. The position of SWRCB, supported by the Department of Water Resources, the District, the State Water Contractors, and many others, is that outflow requirements are a matter of water rights to be determined by the state, and are not within EPA's jurisdiction under the CWA.

Sierra Club will be entitled to file a lawsuit if EPA does not accede to Sierra Club's demand within 60 days. It is not known whether Sierra Club will actually do so. Sierra Club presented similar notices to EPA in August and December of 1991 without filing an action, and issues similar to those raised in the current notice are already the subject of litigation before the California courts in the Golden Gate Audubon Society v. State Water Resources Control Board case.

3. North Delta Water Agency v. California, DWR

The North Delta Water Agency (Agency) has filed an action against the Department of Water Resources (DWR) alleging violation of an agreement to provide it with a particular water quality. The Agency represents the interests of farmers and landowners on certain islands within the Sacramento/San Joaquin Delta. In 1981, DWR entered into an agreement with the Agency promising to operate the State Water Project (SWP) so as to meet specified water quality criteria in the river channels in that portion of the Delta covered by the Agency. A "drought emergency" provision of the agreement excuses DWR from providing that quality on certain contingencies, provided that farmers and landowners are reimbursed for any costs incurred because the specified quality is not provided. Thus, no loss in SWP water supply is at issue in the litigation, but additional project costs could be incurred. Because of the current drought, the water quality criteria of the agreement have not been met in the river channels on many days this summer. DWR has, in the past, provided the required water quality to much of the affected area through overland facilities and has offered to provide facilities to cover all of the affected area. However, the Agency has rejected this offer. Based on the Agency's rejection of DWR's offer to provide a substitute supply and on other facts, DWR asserts that it has met its obligations to the Agency. The State Water Contractors' Board of Directors has authorized intervention in this action in support of DWR if it appears appropriate.

4. California Sportfishing Protection Alliance v. State Water Resources Control Board

The California Sportfishing Protection Alliance (CSPA) has dismissed this action. Its complaint had specifically alleged that a 1991 water transfer between the Yuba County Water Agency and the Department of Water Resources had unreasonably affected fish in the Yuba River. It also generally alleged that DWR's operational plan and water rights permits violated the Water Code, Fish and Game Code, and public

trust doctrine, and sought an order from the court restraining DWR from any further diversion of water from the Central Valley river systems. The Board had authorized the General Counsel to intervene in the action if appropriate; that action had not been deemed necessary.

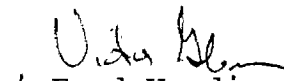
C. Other Matters

WCT Building

On July 8, 1992, a U.S. Bankruptcy Court judge ordered that JCG Finance Company, Ltd. (USA), owner of the WCT building, file its motion for acceptance or rejection of the lease by September 4, 1992; that motion should be scheduled for hearing approximately 30 days thereafter.

A lease for approximately 167,000 square feet of office space at Two California Plaza was executed on July 1, 1992. The lease provides the District with an option until December 31, 1992, for occupancy of an additional 177,000 square feet.

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Monthly


for Fred Vendig