

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

August 11, 1992

To: Board of Directors (Water Problems Committee--Information)
(Legal and Claims Committee--Information)

From: General Manager and General Counsel

Subject: Ward Valley Radioactive Waste Disposal Litigation

Report

The General Manager's May 18 letter to your Board described the environmental documentation and licensing process for a proposed low-level radioactive waste disposal facility in Ward Valley, located some 20 miles west of the Colorado River and 22 miles southwest of the City of Needles. The letter noted that the final environmental impact report for the facility indicated that there was only a remote potential for adversely impacting Colorado River quality, and that the State would hold an adjudicatory hearing on licensing the facility this year to clarify concerns raised by interested parties.

Late last month, however, the license applicant (U.S. Ecology, Inc.) filed an action in the California Supreme Court seeking a peremptory orders preventing that hearing and requiring the State to issue the license on the basis of the existing administrative record. Several other entities interested in the disposal facility have joined in the action and two similar actions filed in that Court at the same time. The Court transferred all three cases without taking any action to the Court of Appeal in Sacramento.

On July 30, several entities requested permission to intervene in the cases, in order to urge the court to allow the adjudicatory hearing process to proceed. Those entities include the California Senate Rules Committee, the City of Needles, three Indian reservations in the area, the Southern California Federation of Sciences, and the Committee to Bridge the Gap. Additional entities have subsequently requested intervention, and the State of Arizona has submitted a friend-of-the-Court brief, in support of preventing the adjudicatory hearing process.

Metropolitan has taken no position either supporting or opposing the Ward Valley radioactive waste disposal facility, but does have a continuing interest to ensure that

the facility will not impair Metropolitan's Colorado River water supply and the public's confidence in drinking water quality. An adjudicatory hearing of the type which the State normally requires before issuing licenses or permits would provide an important opportunity to resolve concerns which have been raised in a high profile media debate between proponents and opponents of the Ward Valley disposal facility regarding possible deficiencies in the existing administrative record. Indeed, Legislative Counsel issued an opinion on April 8 concluding that California law required that type of hearing before the State could issue a license for a low-level radioactive waste disposal facility.

In order to advise the court of the importance of an adjudicatory hearing to Metropolitan as promptly as possible, the General Counsel, in cooperation with the General Manager, has asked the court for permission to file the attached friend-of-the-court brief urging the court to allow the adjudicatory hearing process to proceed.

Board Committee Assignments

This letter is referred for information to:

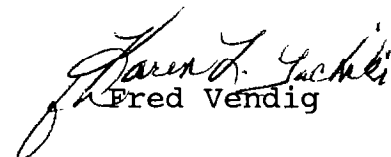
The Water Problems Committee because of its authority to study, advise and make recommendations with regard to policy, sources, and means of importing water required by Metropolitan, under Administrative Code Subsection 2481(a); and,

The Legal and Claims Committee because of its authority to study, advise and make recommendations with regard to litigation, under Administrative Code Subsection 2461(a).

Recommendation

For information only.


Carl Boronkay


Fred Vendig



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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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August 12, 1992

VIA EXPRESS MAIL

Robert L. Liston
Clerk
Court of Appeal
Third Appellate District
913 Capitol Mall, Room 100
Sacramento, California 95814

To Robert K. Puglia, Presiding Justice:

American College of Nuclear Physicians et al.
v. Health & Welfare Agency et al., Case No. CO 13934

We respectfully request permission to file an amicus curiae brief in Case No. CO 13934, American College of Nuclear Physicians et al v. Health & Welfare Agency et al., on behalf of The Metropolitan Water District of Southern California.

The brief will provide argument on the importance of proceeding with an adjudicatory hearing prior to licensing the Ward Valley radioactive waste disposal facility. Petitioner seeks to require respondents to issue that license without an adjudicatory hearing. We are familiar with the questions involved in the case and the scope of their presentation and believe there is a necessity for additional argument on the importance of that adjudicatory hearing as it relates to Colorado River water quality.

Metropolitan provides imported water supplies to 27 member agencies that include well over 200 major urban and suburban communities and is among the largest water supply agencies in the world. Half of California's population, some 15 million people, reside in Metropolitan's six-county service area on the Southern California coastal plain.

Metropolitan's service area has relied on Colorado River water supplies for half a century and will continue to rely on that supply for the foreseeable future to provide increasingly scarce public drinking water supplies.

Robert L. Liston, Clerk

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August 12, 1992

Metropolitan's water supply must meet all federal and state drinking water standards including radionuclide standards.

To assist in expediting this application, we are enclosing our proposed amicus curiae brief along with proof of service on the parties to this action as well as on all amici and parties seeking intervention of which we are aware.

Respectfully submitted,

Fred Vendig, General Counsel
Karen Tachiki, Assistant
General Counsel
Victor E. Gleason,
Senior Deputy General Counsel

By 
Victor E. Gleason

Attorneys for The Metropolitan
Water District of Southern
California

CERTIFICATE OF SERVICE

RE: **AMERICAN COLLEGE OF NUCLEAR PHYSICIANS,**
an Illinois Nonprofit Corporation; SOCIETY OF
NUCLEAR MEDICINE, A Washington Nonprofit Corporation;
and U.S. ECOLOGY, INC., a California Corporation;
California Court of Appeal, Third Appellate District,
Case No. CO 13934

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18,
and not a party to the within cause or action. My business
address is 1111 Sunset Street, Los Angeles, CA 90012.

On August 12, 1992, I served a true copy of:

APPLICATION TO FILE AMICUS CURIAE BRIEF

on the following party(ies) in said action, by placing a true
copy thereof, enclosed in a sealed envelope, and serving:

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____ BY MAIL: By depositing said envelope, with postage
thereon fully prepaid, in the United States mail in Los
Angeles, addressed to said party(ies);

____ BY PERSONAL SERVICE: By causing said envelope to be
personally served on said party(ies), as follows:

X By U.S. Express Mail Delivery

____ By Hand Delivery (Messenger)

Executed in Los Angeles, California, on August 12, 1992 .

I declare, under penalty of perjury, that the foregoing is
true and correct.



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CALIFORNIA COURT OF APPEAL

THIRD APPELLATE DISTRICT

AMERICAN COLLEGE OF NUCLEAR)	Case No. 3 Civil CO 13934
PHYSICIANS, an Illinois Nonprofit)	
Corporation; SOCIETY OF NUCLEAR)	[No Hearing Scheduled]
MEDICINE, a Washington Nonprofit)	
Corporation; and U.S. ECOLOGY,)	
INC., a California Corporation,)	
)	
Petitioners,)	
)	
v.)	
)	
HEALTH AND WELFARE AGENCY;)	
RUSSELL GOULD, Secretary of the)	
Health and Welfare Agency;)	
DEPARTMENT OF HEALTH SERVICES; DR.)	
MOLLY J. COYE, Director of the)	
Department of Health Services,)	
)	
Respondents.)	

BRIEF OF AMICUS CURIAE
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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AMICUS CURIAE BRIEF OF THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

I.

INTRODUCTION AND STATEMENT OF FACTS

We submit this brief on behalf of The Metropolitan Water District of Southern California (Metropolitan)¹, in support of the opposition of the Senate Rules Committee, the City of Needles and others, to Petitioner's request to prevent respondents from proceeding with an adjudicatory hearing before issuing a license to Petitioner U.S. Ecology, Inc., for operation of the Ward Valley radioactive waste disposal facility.

Metropolitan has relied on Colorado River water for over half a century and will continue to rely on it for much of the water Metropolitan delivers to its six-county service area on the Southern California coastal plain. Half of California's population, some 15 million people, reside in Metropolitan's service area. Potential contamination of that supply could seriously jeopardize its usability since Metropolitan must meet all federal and state drinking water quality standards, including radionuclide standards.

¹ Metropolitan is a municipal corporation formed under the Metropolitan Water District Act (Statutes 1969, ch. 209, as amended; West's Water Code - Appendix § 109; Deering's Water Code - Uncodified Act 9129b). It provides imported water supplies to 27 member agencies that include well over 200 major urban and suburban communities. Metropolitan is among the largest water supply agencies in the world.

II.

ARGUMENT

Metropolitan respectfully urges the Court to allow respondents' adjudicatory hearing process to proceed because it will provide an important public evaluation process to resolve concerns raised recently by several entities regarding potential long-term impacts which the Ward Valley radioactive waste disposal facility might have on Colorado River water quality.

Full resolution of those concerns is particularly important because the Colorado River provides a critical portion of Metropolitan's water supply. The United States Supreme Court, in fact, has reserved continuing jurisdiction over the management of California's Colorado River water supply (Arizona v. California (1964) 376 U.S. 340, 346, 353).

This Court has recently reaffirmed the importance of utilizing the River's water supply wisely in connection with a multi-million dollar long-term water conservation program Metropolitan has undertaken with the Imperial Irrigation District to allow even more efficient use of California's Colorado River supply (Imperial Irrigation District v. State Water Resources Control Board (1990, 4th Dist.) 225 Cal.App.3d 548, 562-564, 573; Petn. for review denied March 13, 1991; Petn. for Cert. denied Oct. 7, 1991 [U.S., 116 L.Ed.2d 134]).

/

Concerns which have recently been raised by project opponents have created a public perception that the Ward Valley facility's containment capability is deficient and may pose a hazard to Metropolitan's Colorado River supply. That perception has grown in response to the continuing high profile media debate between proponents and opponents of the Ward Valley disposal facility.

Full disclosure of those concerns and related analyses and assumptions in a quasi-judicial administrative process would provide an opportunity for maintaining public confidence that the project will not jeopardize Metropolitan's ability to meet drinking water quality standards. Public confidence in drinking water quality, while difficult to quantify, is one of Metropolitan's fundamental objectives as a water supply agency.

California's Administrative Procedure Act normally requires that type of hearing as a basis for issuing licenses (Gov. Code, § 11500 et seq.). More specifically, Legislative Counsel has opined that California's Radiation Control Law requires the Department of Health Services to hold an adjudicatory hearing before issuing a license for the disposal of low-level radioactive waste (Opn. #8922, April 8, 1992; Petitioner's Exh. 33).

The importance of an adjudicatory hearing is further increased where, as here, the licensee proposes to deposit very large quantities of radioactive materials. The nature of

the threat and the containment measures needed are extremely difficult to evaluate without the evidentiary reliability which an adjudicatory hearing can provide.

III.

CONCLUSION

Consequently, Metropolitan urges the Court to deny Petitioner's request to stay the Department of Health Services adjudicatory hearing on the Ward Valley low-level radioactive waste facility.

Respectfully submitted,

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and not a party to the within cause or action. My business
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**BRIEF OF AMICUS CURIAE
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

on the following party(ies) in said action, by placing a true
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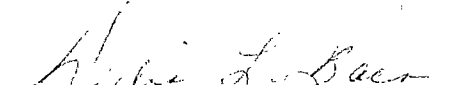
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