

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

August 31, 1992

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

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

A. Proceedings in Which Metropolitan Is a Party

1. San Francisco Bay/Delta Hearings

Staff, together with counsel for the State Water Contractors, prepared a closing brief in the State Water Resources Control Board's (SWRCB) interim standards hearings. The brief was filed August 24, 1992. SWRCB anticipates releasing a draft interim standards decision for review and comment by October 1, 1992, and adopting a final decision by the end of the year.

2. Azusa Landfill Litigation

Metropolitan and the other entities supporting the State Water Resources Control Board's (SWRCB) 1991 Order rescinding the 1988 permit to expand the Azusa waste disposal landfill, filed a joint respondents' brief with the Court of Appeal on August 18, 1992. The landfill operator, Azusa Land Reclamation Co. (ALR), has appealed the superior court's ruling in Main San Gabriel Basin Watermaster et al. v. SWRCB that the California Environmental Quality Act did not require SWRCB to prepare an environmental impact report before rescinding the 1988 expansion permit. The landfill expansion would lie directly over critical groundwater drinking supplies for a million people within the San Gabriel Valley.

Metropolitan also joined with San Gabriel Basin water agencies on August 27, in submitting a letter to the SWRCB which is currently reviewing the Los Angeles Regional Water Quality Control Board's (Regional Board) June 22 resolution amending its basin plan, to prohibit expansion of waste landfills in sand and gravel pits. The letter supports the

Regional Board's prohibition and responds to suggestions by the Regional Board Executive Officer regarding inapplicability of the prohibition to the Azusa Landfill expansion. SWRCB has indicated it may consider this matter at its October regular meeting.

3. Metropolitan Water District of Southern California v. Lorene Brown et al.

On August 23, 1991, a Metropolitan employee was injured in an automobile accident while driving a Metropolitan van. The driver of the other automobile was Lorene Brown. As a result of the automobile accident, the Metropolitan employee was provided with workers' compensation benefits by Metropolitan. Metropolitan alleges that Ms. Brown was responsible for the accident. Accordingly, on August 21, 1992, Metropolitan filed an action in the Los Angeles County Superior Court seeking to recover the workers' compensation payments made to and on behalf of its injured employee.

B. Proceedings of Interest to Metropolitan

1. Ward Valley Radioactive Waste Disposal Facility Proceedings

On August 18, 1992, the Court of Appeal in Sacramento granted Metropolitan's application to file a friend-of-the-court brief in three actions filed to force the Department of Health Services (DHS) to proceed with its licensing process for the Ward Valley low-level radioactive waste disposal facility some 20 miles west of the Colorado River near Needles, without holding an adjudicatory hearing as DHS had planned.

Metropolitan's brief advised the court of the importance of Metropolitan's Colorado River water supply and of the importance of an adjudicatory hearing in resolving matters of public perception regarding disposal of radioactive materials. The license applicant, U.S. Ecology, has filed an opposition to Metropolitan's brief on the basis that this litigation is an inappropriate forum to raise concerns regarding public perception of potential threats from the proposed facility.

On August 27, the court allowed the Senate Rules Committee to intervene, consolidated all three cases (California Radioactive Materials, etc., et al. v. Health & Welfare Agency et al.), and set oral argument for September 15

on three issues regarding authority for holding an adjudicatory hearing in this type of licensing process.

2. Department of Fish and Game v. Anderson-Cottonwood Irrigation Dist.

The California Court of Appeal reversed a trial court decision that the State Endangered Species Act prohibition against "taking" endangered species applies only to "hunting and fishing related activity." Department of Fish and Game filed this action seeking an order restraining Anderson-Cottonwood Irrigation District (ACID) from diverting water from the Sacramento River in a manner that harms the endangered Winter-Run salmon. The trial court denied the order, believing that the prohibition against "taking" listed species applied only to intentional acts such as hunting or fishing, and not to unintentional and otherwise lawful acts such as diverting water for irrigation purposes. The appellate court reversed, holding that the Act "prohibits the killing of endangered species in the course of lawful activity," such as the diversion of water. The court returned the matter to the trial court and ordered it to enjoin ACID from diverting water until it implemented measures to avoid taking winter-run salmon.

C. Other Matters

1. Water Transfer Legislation

A member of the legal staff participated in certain of the negotiations between urban and agricultural interests relating to water transfer legislation.

2. California Water Law & Policy Reporter Article

A member of the staff authored an article on issues surrounding the State Water Resources Control Board's interim standards hearings for the "California Water Law & Policy Reporter," a monthly newsletter on water issues published by Shepard's McGraw-Hill.


Fred Vendig