

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 30, 1992

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

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

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California III (Indian Boundary Claims)

The Special Master has ruled that Metropolitan is not required to join additional private party land claimants abutting the area of the Colorado River Indian Reservation as had been urged by that Tribe. The effect of the Special Master's ruling is to allow the matter to continue without delay. The Special Master has taken under submission Metropolitan's motion for summary judgment regarding this reservation. He is expected to rule by the end of the year.

2. Eagle Mountain Proceedings

**Pumped Storage Hydroelectric Project Study:**

On September 23, 1992, Metropolitan submitted comments to the Federal Energy Regulatory Commission (FERC) in response to Eagle Mountain Energy Company's (EMEC) July 31 consultation meeting on its ongoing feasibility studies of constructing a very large, pumped storage hydroelectric project using old iron ore mining pits at Eagle Mountain near Metropolitan's Eagle Mountain Pumping Plant, and water from Metropolitan's Colorado River Aqueduct (CRA) or other Colorado River water.

EMEC is investigating the feasibility of that project under a 1991 FERC preliminary permit and proposes to apply next year for a FERC license to build and operate the project.

Metropolitan's comments reassert the protest it filed with FERC last year that neither CRA nor other Colorado River water is available for the project; and describe several apparent adverse impacts which the proposed project would have on Metropolitan. The comments also note that EMEC's studies have not identified the reliable water supply needed to generate hydropower, and fail to provide adequate cost data and other information needed to support a finding of feasibility.

**Solid Waste Landfill Project:**

Metropolitan submitted to the Riverside County Board of Supervisors for its September 8 and 9 hearings, written comments on the joint final environmental impact statement and report of the United States Bureau of Land Management and Riverside County on Mine Reclamation Company's proposal for a large regional solid waste landfill at the former Eagle Mountain mine site. Those comments also advised that board that the project sponsors have committed to reach agreement with Metropolitan to assure that the project would not impair Metropolitan's interests. The legal staff is currently assisting the General Manager's staff in those negotiations.

**Sunshine Canyon Landfill:**

On September 17, the State Water Resources Control Board denied the appeal of the City of Los Angeles and others, to the Los Angeles Regional Water Quality Control Board's issuance of a permit to Browning Ferris Industries, Inc., (BFI) for expansion of the Sunshine Canyon Landfill in the San Fernando Valley. SWRCB's Order incorporates findings which Metropolitan requested regarding BFI's responsibility to operate groundwater monitoring facilities in a manner that will fully protect Metropolitan's facility in the area, the Balboa Inlet Tunnel.

**San Gabriel Basin Conjunctive Use:**

On September 21, the Governor approved legislation which creates a San Gabriel Basin Water Quality Authority (Authority) with broader powers than those of a preexisting joint powers agency. The legislation directs the Authority to develop and implement a basinwide groundwater quality management and remediation plan in cooperation with the Main San Gabriel Basin Watermaster and other agencies. However, the legislation requires reauthorization of the Authority before 1998.

Metropolitan is currently negotiating with the Watermaster for a conjunctive use storage agreement to implement a program to extract and treat contaminated basin groundwater for use in Metropolitan's distribution system in coordination with the Authority's basinwide plan. Metropolitan supported this legislation as a constructive step in facilitating protection and remediation of the basin's groundwater supplies.

**B. Proceedings of Interest to Metropolitan**

**1. Pacific Coast Federation of Fishermen's Associations et al. v. Manual Lujan et al.**

As orally reported last month, a group of commercial and sportfishing organizations brought this action in the Federal District Court in Sacramento asserting that the Bureau of Reclamation (Bureau) has a duty to maintain the temperature in the Sacramento River to protect winter run salmon, and that this duty "takes priority over other non-fisheries protection uses." The complaint seeks a court order enjoining the Bureau from "taking" Sacramento River winter run salmon and requiring the Bureau to take a number of actions to maintain the water temperature in specific reaches of the Sacramento River at 56 degrees. If plaintiffs are successful, this action could reduce the amount of water available to the Bureau to meet its water supply contracts and reduce the amount of hydro-power generated by the Bureau. Because of the shared duty of the federal and state water projects to meet water quality objectives in the Delta, this could have some impact on State Water Project (SWP) water supplies. In addition, a number of legal issues important to the SWP supply are at issue, such as the projects' obligation to meet general water quality objectives in basin plans and the application of Fish and Game Code section 5937 (which requires dam owners/operators to keep fish below the dam in good condition) to projects which are already regulated through water right permit terms and conditions.

On September 23, 1992, Judge Lawrence Karlton denied plaintiffs' request for a temporary restraining order and set a hearing for October 9, 1992, on plaintiff's request for a preliminary injunction. If plaintiffs are successful in obtaining a preliminary injunction, it would remain in effect until the litigation is finally resolved, unless modified by the court.

Because of the potential impact of this action on SWP water supplies and the potential judicial interpretation of a number of federal and state statutes affecting SWP water supply operations, Metropolitan and other State Water Contractors (SWC) are analyzing whether the SWC should participate in the action by intervening as parties or submitting amicus curiae briefs in support of the Bureau.

## 2. Endangered Species Act Issues

### **Proposed Endangered Species Act Listing of the Delta Smelt:**

On September 11, 1992, the State Water Contractors (Contractors) requested that the United States Fish and Wildlife Service (USFWS) extend the deadline for a decision on the listing of the Delta smelt as a threatened species for six months. Normally, USFWS would be required by the Endangered Species Act (Act) to make that decision by October 3, 1992, one year after it formally proposed the listing. However, the Act allows for a six month extension on the decision if "there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The Contractors and others presented substantial evidence in USFWS's hearings on the proposed listing indicating that there is "substantial disagreement" regarding the Delta smelt. A six-month extension would, among other benefits, allow the Department of Fish and Game to complete its annual Fall Midwater Trawl Survey, from which it estimates the abundance of the smelt, which over the last few years has shown an increase in the population, with dramatic increases over the last two years.

### **Designation of Critical Habitat for the Sacramento River Winter Run Salmon:**

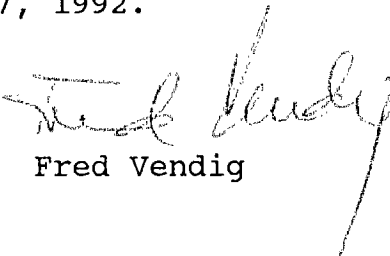
Metropolitan and the State Water Contractors (Contractors) are preparing comments on the National Marine Fisheries Services's (NMFS) proposal to designate the entire length of the Sacramento River, including the reach through the Delta, as "critical habitat" for the threatened Winter Run salmon. While it is not clear what impact such a designation would have on the State Water Project water supply, it is likely that some additional burdens would be imposed on administration, enhancement, or operation of the project. The Endangered Species Act requires that prior to designating critical habitat, NMFS must take "into consideration the economic impact and other relevant impacts" of the proposed designation. However, NMFS's proposed rule has completely

failed to consider the potential impact in the SWP service area, or on the Central Valley Project service area served by water exported from the Delta. The Contractors will raise this and other issues in their comments. The Contractors also requested that NMFS hold a hearing prior to making its decision on the proposed rule. No date has been set.

C. Other Matters

Garvey Reservoir Restoration

The Board of Directors, at its September meeting, certified the final environmental impact report for the repair of Garvey Reservoir, approved Appropriation No. 640 for \$28,000,000 to finance all estimated costs of repair, delegated the power to award contracts to the General Manager, and instructed staff to continue to meet with the Technical Advisory Council. City of Monterey Park officials have indicated that the city will file a suit against Metropolitan on the ground that the final environmental impact report is legally inadequate. The period within which the city may file such a lawsuit will end on October 17, 1992.



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Monthly