

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 30, 1992

To: Board of Directors

From: General Counsel

Subject: Legal Department Report for October 1992

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

A. Proceedings in Which Metropolitan Is a Party

1. Azusa Landfill Litigation

On October 6, 1992, the Azusa landfill operator, Azusa Land Reclamation Company (ALR), filed its reply with the Court of Appeal to the joint response filed in August by Metropolitan and others. ALR is appealing the superior court's approval of the State Water Resources Control Board's rescission last year of ALR's permit for expanding the Azusa landfill which lies directly over the Main San Gabriel groundwater basin. ALR's reply argues that the statutory exemption in the California Environmental Quality Act for disapproval of new projects does not apply to rejection of the Azusa landfill expansion.

The court is expected to schedule oral argument on the appeal early next year. A related suit by Browning Ferris Industries which is pending before the superior court has been stayed pending completion of the appeal, with a status hearing set for January 20, 1993.

2. Garvey Reservoir Restoration

On October 14, 1992, the City of Monterey Park mailed Metropolitan a written notice alleging that, due to violations of the Brown Act, the September 15, 1992 decisions of the Board of Directors to certify the Environmental Impact Report (EIR) for, and to approve the restoration and operation of Garvey Reservoir are null and void. The notice demands that Metropolitan cure and correct the alleged Brown Act violations. On October 16, the General Counsel, by memorandum, informed all the Directors that the Brown Act demand letter should be viewed

as yet another meritless attack on the Board's decision-making process, and recommended taking no action with regard to the purported Brown Act violations, as a result of which they will be deemed denied by operation of law.

On October 15, the city filed suit against Metropolitan alleging that the EIR is legally inadequate and, requesting the court to invalidate the September 15 decisions, and to require Metropolitan to bring the EIR into compliance with CEQA. Metropolitan was served with the lawsuit on October 20. The suit does not indicate whether or not the City will seek to stop further design and construction pending the court's decision on the adequacy of the EIR.

B. Proceedings of Interest to Metropolitan

1. Ward Valley Litigation

U.S. Ecology, Inc. (USE), the applicant for a license to build and construct California's first interstate radioactive waste disposal facility filed this litigation to prevent the Department of Health Services from adding an adjudicatory hearing process to pending licensing proceedings which were initiated several years ago. The facility would be located 20 miles west of the Colorado River in the San Bernardino County desert. The adjudicatory process was developed in connection with Senate Rules Committee (SRC) confirmation hearings.

The court has stayed the adjudicatory process pending its disposition of this litigation, and denied the City of Los Angeles' application to file a short friend-of-the-court brief in support of the adjudicatory process. The court had, however, previously accepted similar briefs from the Los Angeles Department of Water and Power, Metropolitan, and the City of Needles.

The SRC filed its response to this litigation on October 6, 1992, and the Committee to Bridge the Gap and the City of Needles filed supporting friend-of-the-court briefs. The Governor also filed a friend-of-the-court brief acknowledging his agreement to hold and fund the adjudicatory process, but challenging the SRC's description of legislative authority over executive appointments.

USE and the California Radioactive Materials Management Forum filed reply briefs on October 20, to the

briefs of the SRC and the Committee to Bridge the Gap. The court is expected to rule before the end of the year.

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

This action in the federal district court in Sacramento seeks to require the Bureau of Reclamation (Bureau) essentially to operate Shasta Dam for the protection of the endangered Sacramento River winter run salmon. An October 9 motion by the plaintiffs was for the purpose of requiring the Bureau to take a number of specific measures to maintain the water temperature below Shasta Dam at 56 degrees for the asserted protection of the winter run. The proposed actions could have caused significant losses of hydropower generation capability and of water for delivery to contractors. The motion was taken off calendar because the Bureau, with the support of the National Marine Fisheries Services, convinced plaintiffs that it was doing all that was feasibly possible for the winter run, considering impacts on the other runs of salmon and on its other project purposes, and after the court had denied a temporary restraining order requesting the same actions.

3. San Bernardino Valley Audubon Society v. City of Moreno Valley

San Bernardino Valley Audubon Society and Friends of Northern San Jacinto Valley have filed a petition against the Cities of Moreno Valley and Corona as well as the Riverside County Habitat Conservation Agency and the California Department of Fish and Game (Department) challenging certain steps taken in approving a Riverside County development project proposed by Moreno Highlands Investors which is named as a real party in interest.

One of the causes of action asserts that "take" of the Stephen's Kangaroo Rat is being permitted in violation of the California Endangered Species Act. It contests the validity and applicability of an agreement executed by the Department on October 4, 1990, with the County of Riverside, various cities, and the Riverside County Habitat Conservation Agency pursuant to which the latter parties are granted a permit allowing "take" of the rat and are authorized to allow other private and public entities to "take" pursuant to the agreement. The cause of action asserts that "the development

project is resulting in 'take' for purposes other than those permitted by statute, which are scientific, educational or management purposes."

Ultimate disposition of this cause of action is of significant concern to Metropolitan because of the many construction projects it has scheduled in Riverside County areas. In reliance on the validity of the challenged agreement, it has obtained rights to "take" the rat at the Domenigoni Valley Reservoir site and at the Henry J. Mills Filtration Plant.

Counsel for respondents have been actively soliciting assistance from various of the many entities that would be adversely impacted if the agreement is invalidated. Metropolitan has submitted a declaration in support of a motion to dismiss this cause of action. The motion is scheduled for hearing on November 16, 1992. If the motion is denied there is a probability that Metropolitan, and other impacted entities, will be joined in this litigation.

4. Boulder Canyon Project Rate Litigation

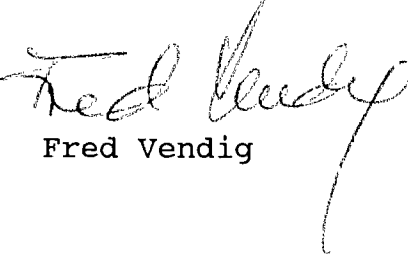
On October 15, 1992, two customers of the Nevada Colorado River Commission filed an action in the United States District Court against the Secretary of the Department of Energy (Secretary) and others, including the Federal Energy Regulatory Commission (FERC). The action seeks judicial review of the interim rate for sale of Boulder Canyon Project Power approved by the Secretary and the orders issued by FERC concerning its deferral of review of the interim rate. The Boulder Canyon Project provides energy used for operation of Metropolitan's Colorado Aqueduct.

While Metropolitan and the other Boulder Canyon Project contractors agree with most of the concerns raised by the Nevada customers, the contractors are working cooperatively with the federal agency responsible for the establishment of power rates, Western Area Power Administration (Western), and have negotiated a settlement agreement with Western regarding the methodology to be used in determining future rates. It is presently not known whether the action will delay FERC's approval of the settlement agreement.

C. Other Matters

Dinwiddie Settlement

A settlement agreement resolving the claims made by Dinwiddie Construction Company against Metropolitan and four of its employees as the result of Dinwiddie's construction of tenant improvements at the WCT Building was executed on October 22, 1992.


Fred Vendig

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