



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-13

November 18, 1992

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

From: General Counsel

Subject: Continuing Liabilities Associated With Transfer of Morris Dam to Los Angeles County Flood Control District Pursuant to 1977 Transfer Agreement

Report

At the November 9, 1992, meeting of the Water Problems Committee, a director inquired as to whether the 1977 transfer agreement provided Metropolitan with any continuing liability after transfer of Morris Dam and Reservoir to the Los Angeles County Flood Control District (Flood Control District). As explained below, the Agreement does provide for continuing liability under limited and defined circumstances.

In October of 1977, Metropolitan entered into an Agreement with the San Gabriel Valley Protective Association and the Flood Control District, providing for transfer of Morris Dam and Reservoir to the Flood Control District under certain specified conditions. Those conditions included completion of the CEQA process, Flood Control's acquisition of easements and permits from the U.S. Bureau of Land Management, Metropolitan securing certain amendments to the then existing lease with the U.S. Navy and completion of a structural and geological analysis of Morris Dam. All of those conditions have now been satisfied.

Indemnity Provisions of the Agreement

Much of the formal indemnity language in the agreement addresses Metropolitan's continuing responsibility for the operation and maintenance of the dam and reservoir during the interim period between execution of the transfer agreement and the final transfer of the facilities to the Flood Control District. Section IX-8 of the Agreement provides:

"During the period between the execution of this agreement and the effective transfer of ownership, Metropolitan shall indemnify and hold harmless the other parties hereto, their governing boards, officers, agents and employees, from any liability to, or claim of liability made by, any party to this agreement or any third party, on account of any damages arising, or alleged to have arisen out of: failure of the dam or appurtenant works or any part thereof, and negligent operation of the dam and facilities, other than performance of any negligent order or direction to it relating or pursuant hereto by any of the other contracting parties."

Section IX-2 of the Agreement shifts this liability to the Flood Control District upon completion of the transfer process. In addition, Section IX-7 provides that Flood Control District shall assume Metropolitan's existing indemnity obligations provided for in the 1932 Agreement between the City of Pasadena and Metropolitan regarding operation of Morris Dam and Reservoir.

Section IX-4 of the Agreement provides that following transfer, Metropolitan will indemnify the Flood Control District for damages resulting only from those operations of Morris Reservoir performed by the Flood Control District in accordance with orders or directions from Metropolitan. It should be noted that during the fifteen-year interim period Metropolitan has been entitled to indemnification from the Flood Control District to the same extent provided by this section.

Other Potential Liabilities

While the Agreement provides that all existing facilities transferred to the Flood Control District are to be transferred "as is" without guaranty or warranty, certain potential liabilities will continue after transfer has been effected.

The Agreement grants Metropolitan the right to undertake construction activities on lands granted to the Flood Control District as necessary to complete the Foothill Feeder with the provision that Metropolitan would be responsible for any liability arising out of such construction activities. Further, Metropolitan is granted specified storage rights in the reservoir by the Agreement and in turn agrees to share proportionately with the other parties in

evaporation and other minor losses. In the event stored water is released because of safety concerns, Metropolitan bears the risk of loss unless it is able to sell the water to a member agency or place it in storage in its cyclic storage account in the Main San Gabriel Basin.

Additionally, Metropolitan reserves the right to use any water in Morris Reservoir as a source of supply in the event of an emergency to meet demands of its member public agencies. The Agreement provides that if Metropolitan exercises this right it shall replace any non-Metropolitan water as soon as State Project Water is available, and accept responsibility for any resulting damage.

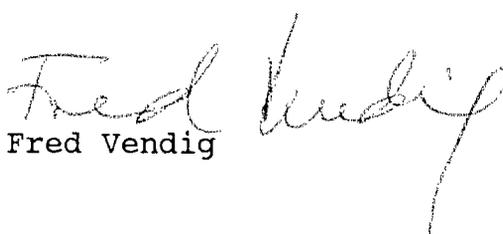
Finally, as with any transfer of real property, Metropolitan has continuing liability under federal and state law as a potentially responsible party in the event an action is undertaken to remediate or remove hazardous material placed on the site during Metropolitan's period of ownership. As to that portion of the site currently occupied, the lease agreement specifically assigns to the United States responsibility for assessing and remediating any material which may have been placed by the Navy on the site during the term of the lease.

Board Committee Assignment

This letter is being referred for information to the Water Problems Committee because of its authority regarding policies dealing with the sale and delivery of water for various uses pursuant to Administrative Code section 2481, subdivision (d).

Recommendation

For information only.


Fred Vendig