



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

November 30, 1992

To: Board of Directors

From: General Counsel

Subject: Legal Department Report for November 1992

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

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California III

The Special Master denied the motion for summary judgment regarding the Colorado River Indian Reservation filed by the State Parties, led by the District. As a result, the parties will proceed to trial on the merits of the dispute. That trial has been tentatively scheduled for March 1993. At stake are approximately 21,000 acre-feet of diversions from the Colorado River.

2. Domenigoni Valley Reservoir Condemnation Litigation

On November 10, 1992, the Board of Directors adopted a resolution of necessity authorizing the filing of eminent domain actions to acquire seven parcels of land for the Domenigoni Valley Reservoir Project. The first action was filed November 18, 1992: Metropolitan Water District v. William A. MacMillan III, et al., Riverside County Superior Court Case No. 226614. An order authorizing the District to take possession of the property will be sought as soon as the deposit of probable compensation required by law has been made. The actions on the remaining six parcels will be filed shortly.

Deposits of probable compensation to be awarded for 16 parcels of land sought to be acquired in 11 of the 20 condemnation actions filed to date by the District have been made in order to enable the District to obtain orders for possession of such parcels. Orders for possession of 12 of such parcels have been obtained to date with 4 remaining in process.

In the case of MWD v. Cornerstone, Inc., Special Counsel successfully resisted on behalf of the District defendant's motion in which defendant sought completion of the case in January of 1993. The property is a major asset of defendant Cornerstone, and it has asserted a value far in excess of the District's appraised value. The case also raises issues of assemblage, land use, potential rezoning, and precondemnation conduct. All issues require substantial trial preparation. Special Counsel has also proposed that the parties and all of defendant's creditors appear before the bankruptcy court to discuss resolution of that court's earlier ruling calling for condemnation trial completion by February 1, 1993.

3. Garvey Reservoir Restoration

On October 14, 1992, the City of Monterey Park (City) mailed the District 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 the District 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. The City has until December 2, 1992, to file a suit regarding the alleged violations.

On October 15, 1992, the City filed suit against the District alleging that the EIR is legally inadequate, requesting the court to invalidate the September 15 decisions, and to require the District to bring the EIR into compliance with CEQA. The District was served with the suit on October 20. The City so far has not sought a court order enjoining further design and construction pending the court's decision on the adequacy of the EIR. We are in the process of preparing an answer to the City's complaint and preparing the administrative record to be filed with the court.

4. MWD v. LaMadrid et al.

On December 24, 1991, the District filed an action against Jose L. LaMadrid and Emile Moeckel seeking to recover workers' compensation benefits that the District paid to two of

its employees. The employees had been injured in an automobile accident for which the District claimed defendants were liable. The District's damages totalled approximately \$20,000. On November 4, 1992, the case was settled for \$14,846.69.

B. Proceedings of Interest to Metropolitan

San Bernardino Valley Audubon Society
v. City of Moreno Valley

We previously advised that 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. This petition includes a challenge to the validity of an agreement under which the District has obtained rights to "take" the Stephens' kangaroo rat at the Domenigoni Valley Reservoir site and at the Henry J. Mills Filtration Plant. Ultimate disposition of this cause of action is of significant concern to the District because of the many construction projects it has scheduled in Riverside County ares. A motion to dismiss this cause of action was heard on November 16, 1992. We have not yet received the court's ruling.

C. Other Matters

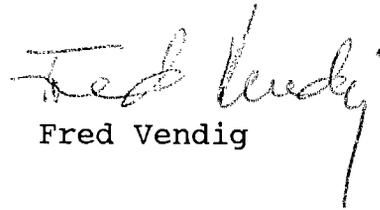
1. Domenigoni Valley Reservoir

A member of the staff participated in negotiation and drafting of agreements with the United States Fish and Wildlife Service, California Department of Fish and Game, Riverside County Habitat Conservation Agency, Riverside County Open Space and Parks District, County of Riverside, and Riverside County Park Facilities Corporation relating to Endangered Species Act compliance for the Domenigoni Valley Reservoir. These agreements were executed at a signing ceremony held on October 28, 1992.

2. Mills Filtration Plant Permit Issue

On November 16, 1992, the District was served with a stop work notice by the City of Riverside's Building Division for alleged failure to comply with various Riverside Municipal Ordinances regarding the procurement of building permits. The

notice directed that construction work be halted on the maintenance building which is currently being constructed at Mills Filtration Plant. Although the District claims it is exempt from having to submit to the jurisdiction of the city because the construction involves a facility for the production, generation or transmission of water, it will enter into a tolling agreement with the city so that construction may continue without delay. The tolling agreement will remain in effect until a matter involving the City of Lafayette and East Bay Municipal Water District and concerning similar legal issues is resolved. That matter is currently pending before the First District Court of Appeal.



Fred Vendig

FV:gld
Monthly