

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

December 30, 1992

To: Board of Directors

From: General Counsel

Subject: Legal Department Report for December 1992

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

A. Proceedings in Which Metropolitan Is a Party

1. Azusa Landfill Litigation (Main San Gabriel Basin Watermaster et al. v. SWRCB)

The Court of Appeal heard oral argument on December 17, 1992, on the Azusa Land Reclamation Co. (ALR) appeal that the State Water Resources Control Board (SWRCB) violated the California Environmental Quality Act by rescinding ALR's Azusa landfill expansion permit without first preparing an environmental impact report. The District has joined with the Main San Gabriel Basin Watermaster, Upper San Gabriel Valley MWD, and the Environmental Defense Fund in opposing that appeal through jointly funded special counsel.

2. Garvey Reservoir Restoration

The District was served with the suit on October 20, 1992, by the City of Monterey Park (City) against the District alleging that the Environmental Impact Report (EIR) for the Garvey Reservoir Project (Project) is legally inadequate and requesting the court to invalidate its September 15, 1992 decisions to certify the EIR and to approve the Project. 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. The District has filed its answer denying the violations alleged in the City's complaint and will soon transmit the administrative record to the City who will file it with the court.

On November 30, 1992, the City filed a second suit alleging that the September 15, 1992 decisions of the Board of Directors to certify the EIR and to approve the Garvey Reservoir Restoration Project are null and void. That suit alleges that the September 15, 1992 Board actions were in violation of the Brown Act and also raises a second alleged CEQA violation, namely, that the Division of Safety of Dams and not the District, was the proper agency under CEQA to have prepared the EIR. The District is currently in the process of preparing a response to this new complaint.

3. Domenigoni Valley Reservoir Condemnation Litigation

A total of 19 condemnation actions have now been filed in the Superior Court of Riverside County, involving 39 parcels of land. Twelve of these cases have been assigned to outside counsel. The cases are in the early stages of litigation. Orders authorizing the District to take possession of the properties will be sought as soon as the deposit of probable compensation has been made in each case. Counsel are also in the process of choosing and retaining appraisers and other expert witnesses.

4. Bay/Delta Hearings--Proposed Decision 1630

As more fully reported in the General Manager's letter dated December 28, 1992, the State Water Resources Control Board (SWRCB) issued draft Decision 1630 on December 10, 1992, setting proposed interim standards for the Bay/Delta Estuary. SWRCB intends that these interim standards would remain in effect until an ultimate Bay/Delta decision is reached in three to five years. By SWRCB's calculation, the proposed decision will reduce exports from the Delta by an average of 800,000 acre-feet per year, up to nearly 2,000,000 acre-feet in some years. SWRCB will accept comment on the proposed decision only until January 11, 1992, and has not provided for any public hearings on the document. The District has requested in writing that SWRCB extend by 60 days the time to comment and that SWRCB hold public hearings on the draft, including one in Southern California. Staff is preparing comments on behalf of the District, in coordination with other State Water Contractors and with the District subagencies.

5. SWRCB D-1485 Compliance Hearing

The State Water Resources Control Board (SWRCB) held a public hearing to determine whether it should take any action against the state and federal water projects because of the projects' failures to meet D-1485 water quality requirements during 1991 and 1992. During those two drought years, D-1485 salinity requirements meant to protect Suisun Marsh and Contra Costa Canal water quality were exceeded on a number of occasions. The Department of Water Resources and Bureau of Reclamation jointly testified that because of dangerously low water supplies during those years, they were unable to release the extra water normally released as a cushion against unexpected Delta conditions such as high tides and winds and local agricultural drainage. In addition, the projects were required to take a number of actions to benefit the endangered winter run salmon which were not contemplated in D-1485 and which complicated compliance with the standards. The District, a number of witness representing its member agencies, and other state water contractors testified to the bleak water supply condition in early 1991 and argued that the projects acted appropriately to stretch public water supplies during the drought. Subsequently, SWRCB issued an order which excused the projects from meeting a salinity standard established for the benefit of a number of industrial users in Contra Costa County, and instead imposed a new export pumping restriction through the end of 1993. It is likely that this order will save the projects some water this year. SWRCB is still considering further action.

6. Dorri v. MWD

The District has received notice from the Court of Appeal that the appeal in this matter has been dismissed because of appellant's failure to file the requisite opening brief. This matter was appealed by plaintiff from a judgment rendered against him in the Los Angeles Superior Court on August 29, 1991, in this personal injury action. The action was brought by plaintiff, a 46-year old engineer, who was seriously injured when his bicycle was struck by a District automobile driven by a District employee on December 19, 1989, at the intersection of McBean Parkway and Singing Hills Drive in Valencia, California. After trial of this matter in July 1991, Judge Bruce Sottile rendered a judgment in favor of the District in all respects. Plaintiff's failure to properly pursue his appeal ends this litigation and the matter will be closed unless plaintiff attempts to revive it by petition or otherwise.

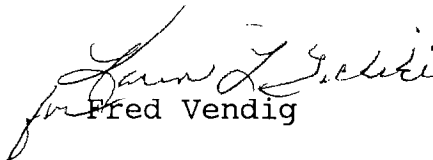
B. Proceedings of Interest to Metropolitan**Tax Shift Litigation
(Ventura County Taxpayers Assn. et al. v. Hawkes)**

The General Counsel submitted a friend-of-the-court letter with the California Supreme Court on December 15 urging the court to retain jurisdiction over a case filed with it the previous week by Calleguas Municipal Water District and several other Ventura County agencies and individuals. The case challenges the constitutionality of two recently enacted urgency statutes which shift state tax burdens to local agencies by reallocating the one percent tax levy provided by article XIII A of the California Constitution.

The letter urges the court to expedite determination of the case because of its impact on local water management agencies. The letter advises that while the District itself is not directly affected by the legislation, it is especially sensitive to the urgent need to resolve the issues presented. It notes that local agencies, including some District member agencies, are now in the process of formulating their respective water management budgets for the fiscal year beginning July 1 and have suffered significant revenue losses because of the legislation.

C. Other Matters

None.


Fred Vendig

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Monthly