

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

January 29, 1993

To: Board of Directors
From: Assistant General Counsel
Subject: Legal Department Report for January 1993

This report discusses significant matters with which the Legal Department was concerned during January 1993.

A. Proceedings in Which Metropolitan Is a Party

1. Azusa Landfill Litigation

The Court of Appeal filed a decision on January 28, 1993, denying Azusa Land Reclamation Company's (ALR) appeal in Watermaster et al. v. State Water Resources Control Board. ALR had appealed the superior court ruling that SWRCB was not required to prepare an environmental impact report before disapproving expansion of the Azusa solid waste landfill in 1991. The court ruled that in adopting the California Environmental Quality Act, the Legislature exempted project disapprovals, such as the State Water Resources Control Board's (SWRCB) disapproval of the landfill expansion, from environmental review.

The decision will become final in 30 days. ALR may request a rehearing by February 12, and may petition the Supreme Court for review within ten days after the Court of Appeal decision becomes final.

Metropolitan initiated this litigation three and one-half years ago in cooperation with the Main San Gabriel Basin Watermaster, Upper San Gabriel Valley Municipal Water District, and the Environmental Defense Fund to set aside SWRCB's 1989 order that approved expansion of the landfill. The landfill is located near the main groundwater recharge area for the San Gabriel Basin which provides drinking water supplies for nearly a million people. In addition, the basin is one of the largest in Metropolitan's service area, and Metropolitan has stored substantial amounts of imported water in it over the past several years.

ALR's parent corporation, Browning Ferris Industries (BFI), is also challenging SWRCB's disapproval of the landfill expansion as a violation of the Porter-Cologne Water Quality Control Act and various other statutory and constitutional provisions, in a case currently pending in the Los Angeles Superior Court (BFI v. SWRCB). On January 20, that court continued its stay of that case pending completion of the appeal in Watermaster et al. v. State Water Resources Control Board.

2. Eagle Mountain Energy Company FERC Proceedings

The Federal Energy Regulatory Commission (FERC) issued an order on January 22, 1993, denying a motion of Mine Reclamation Corp. (MRC), Kaiser Steel Resources, and Riverside County challenging the 1991 issuance to Eagle Mountain Energy Company (EMEC) of a FERC study permit. EMEC proposes to build a large pumped storage hydropower project at Eagle Mountain in abandoned mining pits which MRC already proposes to use for a solid waste disposal facility.

EMEC's permit application also proposes to obtain the project's water supply from Metropolitan's Colorado River Aqueduct (CRA). Accordingly, Metropolitan filed a statement with FERC last month supporting MRC's motion challenging EMEC's permit.

Metropolitan protested the permit application and intervened in the FERC proceedings nearly two years ago. Metropolitan has been participating in EMEC's feasibility study discussions and has advised EMEC that its proposed use of the CRA is unacceptable. However, EMEC still has not identified a credible project water supply.

3. Garvey Reservoir Restoration

On December 21, 1992, Metropolitan transmitted to the City of Monterey Park (City) the ten volume administrative record for the City's initial suit under the California Environmental Quality Act (CEQA) challenging the adequacy of Metropolitan's Environmental Impact Report (EIR) for the Garvey Reservoir Project (Project). On December 22, 1992, Metropolitan filed its answer denying the allegations of the City's second suit that the Division of Safety of Dams (DSOD), rather than Metropolitan, should have prepared the EIR, and that Metropolitan's September 15, 1992 approval of the Project violated the Brown Act because the City was not allowed adequate time for comments to the Board on September 15, 1992.

On January 22, 1993, the court granted Metropolitan's application to advance the trial date for the EIR adequacy suit from the April 22, 1993 date initially chosen by the City to March 1, 1993, on the ground that CEQA actions are to be given priority over all other types of civil actions. On February 1, 1993, the court denied the City's application to delay the trial date back to April 22, 1993.

On February 8, 1993, the court will hear the City's motion to consolidate both suits into a single suit for all purposes, including trial. We are opposing that motion because it is untimely, could delay the trial of the EIR adequacy suit, and could give the City an argument that its claim in the second suit that DSOD should have prepared the EIR was filed within the applicable CEQA statute of limitations.

B. Proceedings of Interest to Metropolitan

Delta Smelt Listing

A group of environmental organizations have sued the United States Fish and Wildlife Service (USFWS) in federal court requesting the court to order USFWS to list the Delta smelt as a threatened or endangered species. Under the Federal Endangered Species Act, USFWS was required to decide whether to list the smelt by October 3, 1992, although it could have extended the time period for an additional six months. USFWS has neither made its determination nor officially extended the time period. It is our understanding that the California Department of Fish and Game's Delta smelt fall index for 1992 is the third lowest on record, and it is likely that the USFWS will list the Delta smelt as a threatened or endangered species regardless of the outcome of this litigation. The California Fish and Game Commission also intends to reconsider its prior decision to defer listing the Delta smelt in the near future.

C. Other Matters

ACWA Legal Affairs Subcommittee

A member of the legal staff participated on a subcommittee of the Association of California Water Agencies' Legal Affairs Committee, regarding groundwater storage issues involved in a pending appeal over use of imported groundwater in San Benito County.


for Karen L. Tachiki