



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-7

February 22, 1993

(Land Committee--Information)  
(Legal and Claims Committee--Action)  
To: Board of Directors (Organization and Personnel Committee--  
Action)  
From: Assistant General Counsel  
Subject: Authority to Retain Expert Witnesses for Trial in Eminent  
Domain Proceedings Related to the Domenigoni Valley Reservoir  
Project

Report

Eminent domain actions have been filed by the General Counsel to acquire 32 parcels of land in the Domenigoni and Diamond Valleys for the Domenigoni Valley Reservoir Project. It is anticipated that over 50 additional lawsuits will be filed in the near future to acquire property for this and related projects proposed by Metropolitan. Four outside law firms have been retained to aid in this effort.

In each eminent domain action which proceeds to or near trial it will be necessary to retain one or more experts to consult and testify to the value of the property, fixtures, improvements, loss of business goodwill and other items of compensable property claimed by the owner. It may also be necessary to retain other experts to testify on related issues. These experts will often be different than the appraiser retained by Right-of-Way to perform the initial appraisal. They will be selected specifically for the litigation because of the change in valuation date and new issues which arise during negotiations.

The General Counsel is limited to contracts for \$25,000 in any one year under Section 6431 of the Administrative Code. Any contract in excess of that amount requires approval and authorization of the Board of Directors. This approval process will result in some time delays in the hiring of expert witnesses and will also require a substantial amount of staff and Board time and resources to process the numerous proposed contracts for approval. The cost of trial expert services will vary with the complexity of the issues in each case, but in general the costs range from \$35,000 to \$50,000 per case. The expert witnesses, and in particular the appraisal experts, retained for the Domenigoni Valley Reservoir litigation will usually be working on more than one case.

It is proposed that the General Counsel be authorized to contract with expert witnesses retained to work on eminent domain actions in amounts not to exceed \$250,000.00 per expert firm. This authority will match that given to the General Manager under Administrative Code Section 8115(c) and will provide the flexibility and efficiency needed to deal with the large number of eminent domain cases currently being handled. It is necessary for the General Counsel, rather than General Manager, to hire expert witnesses so that the full protection of the attorney work product doctrine is preserved.

These experts will be retained after consultation with Right of Way and Land Division and outside counsel handling the litigation. The Right of Way Division has engaged a substantial number of qualified appraisers who are knowledgeable about the Domenigoni Valley area. This pool will be the source of most of the experts retained for the litigation. The General Counsel will comply with Metropolitan's affirmative action policies in its hiring of experts and will require compliance in its contracts with the expert witnesses.

The services of expert witnesses are unique and, therefore, are exempt from competitive bidding pursuant to Section 8103(e) of the Administrative Code.

The General Counsel will report quarterly to the Board on the expert witness contracts which are in effect and the amounts which have been expended under each contract.

The proposed action is exempt from the provisions of the California Environmental Quality Act.

#### Board Committee Assignments

This letter is referred to:

The Legal and Claims Committee for action because of its authority under Administrative Code Section 2461 to study, advise and make recommendations with regard to litigation brought by the District.

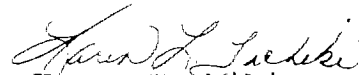
The Organization and Personnel Committee for action because of its authority under Administrative Code Section 2471 to study, advise and make recommendations with regard to the terms and conditions of employment of all consultants and advisors.

The Land Committee for information because of its authority under Administrative Code Section 2451 to study, advise and make recommendations with regard to policies for the acquisition of land.

Recommendation

**LEGAL AND CLAIMS COMMITTEE AND ORGANIZATION AND PERSONNEL COMMITTEE FOR ACTION.**

It is recommended that the General Counsel be authorized to contract for the services of appraisers and other experts to consult and testify for the District in eminent domain litigation related to the Domenigoni Valley Reservoir Project under contracts not to exceed \$250,000.00 in total cost per expert firm.



Karen Tachiki

Assistant General Counsel