

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

June 30, 1993

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

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

## **I. Litigation**

### **A. Proceedings in Which Metropolitan Is a Party**

#### 1. Arizona v. California III (Indian Boundary Case)

Opening and reply post-trial briefs were prepared and filed with the Special Master regarding the claim of the Colorado River Indian Reservation to an additional 21,000 acre-feet a year of Colorado River water. Following oral argument on June 28, 1993, the Special Master is expected to make a recommended decision to the United States Supreme Court.

#### 2. Monterey Park v. MWD (EIR Adequacy Case)

Preparations for an appeal by Metropolitan in this matter continued during the month of June with work on the Joint Appendix in Lieu of Clerk's Transcript and our Opening Brief which is due no later than July 23, 1993.

#### 3. Monterey Park v. MWD (CEQA Lead Agency, Brown Act)

The superior court granted Metropolitan's application to dismiss the entire lawsuit and the notice of entry of dismissal was filed on June 16, 1993. The City has 60 days from June 16 within which to file a notice of appeal.

#### 4. Domenigoni Reservoir Acquisition

There are now pending 61 eminent domain cases in Riverside Superior Court. Two cases have been set for trial-- one in August 1993, and the other in January 1994, both are being handled by special counsel.

Staff has continued to negotiate an agreement with the Domenigoni family with regard to a water supply to replace the system which will be lost with acquisition of their property. Staff also continued to assist the Right-of-Way and Land Division with negotiations on several proposed settlements.

#### 5. Mine Reclamation Corp. v. FERC (Eagle Mountain)

Metropolitan filed a motion with the U.S. Court of Appeals for the District of Columbia on June 18, 1993, for leave to intervene in an appeal challenging the Federal Energy Regulatory Commission's (FERC) 1991 issuance of a permit to Eagle Mountain Energy Company (EMEC). The permit allows EMEC to study the feasibility of building a large, pumped-storage hydroelectric plant in old Kaiser mining pits near Metropolitan's Colorado River Aqueduct (CRA) and Eagle Mountain pumping plant. The appeal was filed by Mine Reclamation Corp. (MRC) which has a prior proposal to build a regional solid waste landfill in the same area.

Metropolitan seeks to intervene because EMEC's permit application asserted that Metropolitan's CRA would provide the water supply, and because EMEC has still not identified an acceptable project water supply. Metropolitan intervened in the FERC proceedings two years ago and protested EMEC's purported use of the CRA, as well as potential adverse impacts on CRA operations in other regards.

EMEC, which intervened in the appeal last month, is opposing Metropolitan's intervention although neither MRC nor FERC are opposing it. EMEC asserts that the FERC permit orders do not prejudice Metropolitan, that the other parties will adequately protect Metropolitan's interests, and that Metropolitan should have filed its request earlier. Metropolitan submitted its reply to EMEC's opposition on June 30, 1993.

6. BFI v. SWRCB (Azusa Landfill)

On June 18, 1993, the Los Angeles County Superior Court ordered an expedited briefing schedule and a December 8 trial for eight of the eleven causes of action in the remaining Azusa Landfill case. The remaining three causes assert inverse condemnation claims against the state have been deferred until after determination of the other causes of action.

The case seeks to overturn SWRCB's 1991 Order which rescinded a 1988 Regional Board permit that allowed Browning Ferris Industries, Inc. (BFI), to nearly quadruple the size of its Azusa solid waste landfill which is located in the critical water recharge area of the Main San Gabriel groundwater basin. Metropolitan has intervened in this case in support of SWRCB, along with the Main San Gabriel Basin Watermaster, Upper San Gabriel Valley MWD, and the Environmental Defense Fund.

7. Borel Complaint to SWRCB (Skinner Reservoir)

On June 25, 1993, Metropolitan submitted to the State Water Resources Control Board, an answer to a complaint which Alexander Borel filed last month regarding the manner in which Metropolitan releases local runoff into Tocalota Creek which is a tributary of the Santa Margarita River. That answer requests dismissal of the complaint for several reasons, primarily because the reservoir releases are made pursuant to operating criteria adopted by the federal district court which has continuing jurisdiction over the Santa Margarita River. The court's watermaster submitted a similar response to SWRCB.

8. Robert C. Denman v. MWD

On June 22, 1993, ex-District employee Robert Denman served on the District a Petition for Writ of Mandate, seeking reinstatement with the District. Mr. Denman was discharged on August 26, 1992 for failing to notify the District that his driver's license had been suspended and continuing to drive District vehicles without a license. He had been suspended previously for the same causes and specifically directed to keep his driver's license current and immediately report to the District any future suspension of his license. The discharge was upheld by an appeal panel after a hearing under the District's appeal procedures. The Petition alleges Mr. Denman was denied a fair hearing, that the discharge is not supported by the facts and that the penalty (discharge) was excessive.

This office is preparing its response to the Petition, which is due July 22, 1993.

B. Proceedings of Interest to Metropolitan

Ward Valley Nuclear Waste Facility

The Senate Rules Committee has petitioned the California Supreme Court to review the Court of Appeal's May 7 Opinion which voided the Department of Health Services' plan for holding an adjudicatory hearing on the proposed license for a Low Level Nuclear Waste Disposal facility in Ward Valley (located some 20 miles east of the Colorado River, near Needles, California). Metropolitan, and several entities, had filed friend of the court briefs supporting that plan. The Supreme Court has two months to decide whether it will review the case.

II. Resource/Environmental Issues

1. State Water Project

(a) Staff continued to advise and support the General Manager's negotiations with other State Water Contractors over Article 18 issues. The basis of these negotiations have been reported on in detail at the Executive and Legal and Claims Committees on May 25 and June 14, respectively.

(b) Staff also continued to support the General Manager's participation regarding the Los Banos Grandes Task Force by presenting to the Task Force Metropolitan's legal position on several key issues relating to the scope of authority of the Department of Water Resources. This task force is being renamed to the "Article 12(d)" Task Force as it will be considering issues related to the rights of the State Water Contractors to receive amounts of deferred entitlement water under Article 12(d) of the State Water Contract.

2. Colorado River Issues

(a) Staff continued to support the General Manager's negotiations of a contract to line the All-American Canal in return for the right to divert the conserved water.

(b) Staff continued to participate in the ongoing discussions among the lower division states (Arizona, California, and Nevada) to more efficiently operate the Colorado River. The Arizona Groundwater Banking program was developed out of these discussions.

(c) Staff continued to participate in ongoing activities with regard to the designation of critical habitat of four endangered species on the Colorado River. Staff participated in the negotiation of contracts for technical consultants and will be a regular participant in the steering committee established by the Six-Agency Committee of the Colorado River Board to coordinate California's concerns on these issues.

3. Lake Mathews Multi-Species Habitat Conservation Plan

Initial drafts of agreements for this Habitat Conservation Plan were prepared by staff this month.

### III. Legislation

A. Endangered Species

The General Counsel testified before the United States House of Representatives, Committee on Merchant Marine and Fisheries, Subcommittee on Environment and Natural Resources regarding amendments to the Endangered Species Act.

B. Water Transfer Negotiations

A member of staff continued to participate with the General Manager's staff in several negotiating sessions among the urban, agricultural, and environmental interest on AB 97.

On June 24, 1993, a member of the legal staff attended an ACWA Water Rights Committee meeting on a legislative proposal (AB 2014, Cortese, San Jose), to provide additional water conservation incentives for appropriative water rights holders that are currently diverting or using water wastefully. Metropolitan's Board supported that proposal at its June meeting if it is amended to remove apparent loopholes that could be used to delay water conservation efforts. The committee was unable to reach a consensus on

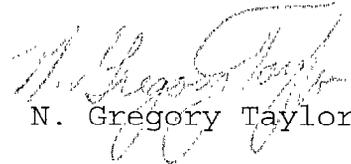
modifications needed to deal with several other problems, as well as those Metropolitan identified.

#### **IV. Finance Issues**

A member of staff participated in the preparation and review of documents necessary for the sale of refunding bonds in an amount in excess of \$160 million. Closing is anticipated on July 22, 1993.

#### **IV. Other Matters**

A. Staff continued, in coordination with special counsel, to advise the General Manager's staff with regard to legal issues arising out of the permanent headquarters selection process as well as legal requirements, and issues arising out of interim space options.



N. Gregory Taylor

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