

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 17, 1993

To: Board of Directors (Legal and Claims Committee--Information)
(Executive Committee--Information)

From: General Manager and General Counsel

Subject: Update on Audubon vs. Environmental Protection Agency

Report

In July 1993, your Board approved intervention by Metropolitan in legal proceedings brought by The Sierra Club Legal Defense Fund (The Sierra Club), representing the National Audubon Society and others, against the United States Environmental Protection Agency (EPA). The Sierra Club contends that EPA has not promptly fulfilled its responsibilities under the Federal Clean Water Act to protect the Bay/Delta Estuary. The Federal court has defined this case narrowly to deal solely with the issue of whether EPA has "acted promptly" in promulgating the Bay/Delta standards under the Federal Clean Water Act. Metropolitan's interests in this case are two fold. First, to assure that The Sierra Club and EPA do not stipulate to a consent decree, or that the Federal court does not order Bay/Delta outflow standards or restrictions in Bay/Delta exports. Second, to assure that the EPA is not forced to act prematurely in setting standards before a reasonable approach can be developed to resolve these highly complicated environmental issues.

On July 19 -- over the objections of the Department of Justice, EPA, and The Sierra Club -- the Federal court granted motions for intervention by Metropolitan and other municipal and industrial State Water Contractors (SWC), and the Kern County Water Agency (KCWA) and other agricultural SWC. The court established February 28, 1994 as the date for oral arguments on cross-motions for summary judgment. This action eliminated any pressure from the Federal court to establish a date earlier than February 28, 1994 for the promulgation of any EPA Bay/Delta standards. A discovery and briefing schedule was also set by the court for the intervening period before the oral arguments, and significant discovery was served on EPA by Metropolitan and the other intervenors.

During the intervention hearing with the Federal court, it was learned that settlement discussions were being conducted between the Department of Justice and The Sierra Club attorneys. The Federal court strongly implied that the intervenors had an interest in participating in such discussions. At a subsequent status conference with the Federal court, The Sierra Club attorneys offered to include the intervenors in the discussions. However, despite repeated written and telephonic requests, the intervenors have not been permitted to participate in those discussions.

A meeting was scheduled with Federal and EPA attorneys in Washington D.C. on September 13 to discuss the status of the case. At that meeting, representatives of Metropolitan and KCWA were informed that The Department of Justice and The Sierra Club had finalized a settlement that day in the case that would require EPA to promulgate proposed standards by December 15, 1993. The intervenors did not know before the September 13 meeting about the settlement which is contrary to the court's instructions. Under The Clean Water Act, the effect of the settlement would require EPA to implement final standards within 90 days, or by March 15, 1994. It is believed that this is far too short a period to accomplish this task.

Details of the proposed settlement reveal that the first of Metropolitan's objectives have been met. That is, the proposed settlement does not order EPA to develop protective water quality standards such as outflow requirements or export limits. However, the settlement agreement is not consistent with Metropolitan's second objective since it sets an early date for EPA to publish draft standards. Significantly, the December 15 date to publish the Bay/Delta standards can be extended by joint agreement between The Sierra Club and EPA administrator; or the EPA administrator separately, subject to The Sierra Club opposition. Thus, the main purpose of the settlement appears to be to block the discovery proceedings of the intervenors. Metropolitan and KWCA intend to strenuously object to the settlement, which we believe impairs EPA's ability to develop reasonable standards and which was reached without the participation or knowledge of Metropolitan or the other intervenors. If the settlement is ultimately approved by the court and the December 15 deadline is unchanged, it would result in an accelerated time line for the action by the Federal government to impose standards on the Bay/Delta system. More importantly, this action indicates that the federal agencies having jurisdiction over the Bay/Delta are fully coordinated and ready to proceed without further delay on Federal Bay/Delta regulatory matters. The Bay/Delta and Legal staff will keep your Board informed of developments in this case as they occur in the future.

Board Committee Assignments

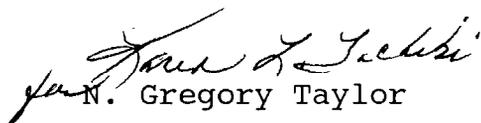
This letter is referred for information to:

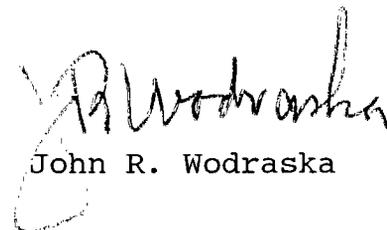
The Executive Committee because of its authority to study, advise, and make recommendations with regard to policies and procedures to be considered by the Board, pursuant to Administrative Code Section 2417(e); and

The Legal and Claims Committee for information because of its authority to study, advise, and make recommendations with regard to litigation and claims brought about by or against the District, pursuant to Administrative Code Section 2461(a).

Recommendation

For information only.


N. Gregory Taylor


John R. Wodraska

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