



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

September 30, 1993

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California (Indian Boundary Case)

On September 20, 1993, Special Master Frank McGarr ruled in favor of the District's position that the boundary of the Colorado River Indian Reservation was a riparian, or moving boundary. The United States and the tribes had claimed that the boundary, established in 1876, denoted a fixed boundary and entitled the tribes to additional water rights of approximately 21,000 acre-feet. Following trial of the matter and closing briefs and oral argument, the Special Master ruled in the District's favor. The Special Master, prior to making his recommendations to the United States Supreme Court, must also determine the last natural position of the river in order to finally set, for water rights purposes, the boundary of that reservation.

2. Azusa Landfill (BFI v. SWRCB)

The Azusa Landfill owner, Browning Ferris Industries (BFI), filed an extensive opening brief on September 15, 1993, with the Los Angeles Superior Court. BFI is seeking to invalidate the 1991 State Water Resources Control Board order which rescinded BFI's permit to expand its discharge of non-inert solid waste in a gravel pit located near the recharge area for the Main San Gabriel groundwater basin. The District

has intervened in the suit along with its member agency in the area, the Basin Watermaster, and the Environmental Defense Fund. Response briefs are due November 15, with trial set for December 8.

3. Eagle Mountain Pumped Storage Proposal (MRC v. FERC)

The federal Circuit Court of Appeal for the District of Columbia, on September 10, 1993, granted the District's motion to intervene in the appeal by Mine Reclamation Corp. (MRC) of Federal Energy Regulatory Commission (FERC) orders which rejected challenges to a preliminary study permit that FERC issued to Eagle Mountain Energy Company (EMEC) in 1991. The permit allows EMEC to investigate the feasibility of constructing a large pumped-storage hydroelectric generation project in old mining pits near the District's Colorado River Aqueduct (CRA). MRC proposes to use the pits instead for a regional solid waste disposal facility.

The District protested the permit application because it specified the District's CRA as the source of water for the proposed project. While EMEC has subsequently indicated that it is seeking another water source, there remains uncertainty as to the extent to which EMEC would seek to acquire rights to Colorado River water or seek to use the CRA to transport water it might acquire.

4. Los Angeles Mono Basin Water Rights

The District filed the written testimony of Dr. Quinn and related exhibits with the State Water Resources Control Board (SWRCB) on September 22, 1993, for hearings starting October 20 on reducing water rights licenses held by the City of Los Angeles for exporting water from four streams tributary to Mono Lake. The exhibits included the General Manager's September 17 letter to SWRCB supporting solutions to the Mono Lake Basin issues that deal with resulting future water supply impacts on the District's service area in an environmentally and economically responsible manner.

The 14 other parties have filed some 400 exhibits and listed some 300 witnesses for the proceedings which are expected to continue through November. Most of the issues relate to Mono Basin restoration and public trust issues.

5. MWD v. Cucamonga Development Company

By opinion issued September 14, 1993, Division 2 of the Court of Appeal, 4th District, has affirmed the San Bernardino Superior Court trial judge's denial of Cucamonga Development Company's (Cucamonga) motion for attorneys' and appraisers' fees and costs totalling approximately \$134,000. This eminent domain action was originally brought to acquire real property located in the City of Rancho Cucamonga for purposes of the Etiwanda Pipeline and the appurtenant facilities. Compensation was earlier agreed to and paid with regard to both parcels involved. The only outstanding issue was a motion by Cucamonga for attorneys' and appraisers' fees and other costs which required that Cucamonga demonstrate that the District had been unreasonable in its handling of this case. Except for payment of costs on appeal, which are to be borne by the District pursuant to statute in this case, this should close this matter unless Cucamonga chooses to pursue a petition for review with the California Supreme Court, which is unlikely to be successful.

6. Garvey Reservoir Restoration Project

The settlement agreement between the City of Monterey Park and the District as authorized by your Board at its August meeting was fully executed on September 16, 1993, and the joint application to vacate the trial court judgment and dismiss the action with prejudice was also filed in the Court of Appeal on September 16, 1993.

7. Robert Denman v. MWD

On September 22, 1993, Los Angeles Superior Court Judge Robert H. O'Brien denied the request of former employee Robert Denman that he be reinstated to employment with the District. Mr. Denman had been discharged for failing to report suspension of his driver's license while continuing to operate District vehicles; he had been suspended previously for the same reason. He filed a writ of mandate action seeking reinstatement and back pay, asserting that he had been denied a fair hearing and that the facts did not support the discharge. Judge O'Brien denied the writ, determining that there was no showing that Mr. Denman did not receive a fair hearing, and that the evidence produced at that hearing supported the discharge.

8. Golden Gate Audubon v. Browner

Plaintiffs and the United States Environmental Protection Agency (EPA) have tentatively agreed to a stipulated judgment in this action to require EPA to issue Bay/Delta standards by a date certain. The agreement would require EPA to issue proposed standards by December 15, 1993; the agreement does not specify the contents of the standards. However, EPA and plaintiffs refused to allow intervening parties, including the District, to participate in negotiation of the agreement, despite the fact that the court's order allowing intervention made intervenors full parties to the action, and despite at least three written notifications to EPA and plaintiffs that intervenors desired to participate in any such negotiations. Consequently, the District and other intervening parties filed objections to the stipulation. The court has ordered EPA and plaintiffs to respond to those objections and has set a hearing date of November 1, 1993 to consider accepting the agreement.

9. Domenigoni Valley Reservoir Project-Eminent Domain Cases

Work continued on some 59 pending eminent domain cases in Riverside County Superior Court.

B. **Proceedings of Interest to Metropolitan**

Colorado River Wildlife v. Turner

On September 21, 1993, the federal district court in Denver denied plaintiff's motion that the court order the USFWS to immediately issue an "interim final" regulation designating critical habitat for four listed endangered species on the Colorado River, without completing the economic analysis required by the Endangered Species Act. The District, as part of the Six-Agency Committee had supported, by a friend of the court brief, the United States' position that no "interim final" regulation could be issued without the required analysis. The court did order the USFWS to issue its final designation by March 15, 1994. This is two months sooner than the USFWS proposed in a schedule it submitted to the court.

II. Resource/Environmental Issues

1. Water Transfers

Staff continued to provide assistance to the General Manager with regard to certain implementation issues arising from the Central Valley Improvement Act on the transfer of Exchange Contractor water.

Staff also continued to provide assistance with regard to the negotiation of appropriate final documentation for the proposed transfer of water with Areias Dairy Farms.

2. Central Pool Augmentation

Staff continued to work with the Planning Division to respond to comments raised by a landowner in Eagle Valley with regard to District's draft EIR for the Central Pool Augmentation.

3. Lake Mathews MSHCP

Staff continued to negotiate with the Riverside County Habitat Conservation Agency with regard to the Lake Mathews Multi-Species Habitat Conservation Plan.

III. Contracts

None.


N. Gregory Taylor

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Monthly