

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

November 30, 1993

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Azusa Landfill Litigation (BFI v. SWRCB)

The District filed an opposing brief with the Los Angeles Superior Court on November 15, 1993, to a mandate petition which seeks to vacate the State Water Resources Control Board's (SWRCB) 1991 order rescinding expansion of the Azusa solid waste landfill. That landfill overlies a critical area of the Main San Gabriel groundwater basin which provides drinking water supplies for one million people and in which the District stores imported water supplies.

The Upper San Gabriel Valley Municipal Water District and the Environmental Defense Fund joined in the brief which supports SWRCB's order as a proper exercise of its water resource protection responsibilities under the Porter-Cologne Water Quality Control Act and related water resource protection statutes. The court has scheduled a hearing for December 8, 1993. Earlier this year, the courts rejected a similar challenge under the California Environmental Quality Act, to SWRCB's order.

2. Eagle Mountain Hydropower Litigation (MRC v. FERC)

A member of the Legal Department staff participated in a mediation conference on November 12, 1993, with other counsel in a suit filed by Mine Reclamation Corporation (MRC) to invalidate Federal Energy Regulatory Commission orders

permitting Eagle Mountain Energy Company (EMEC) to study the feasibility of using old Eagle Mountain mining pits for a large pumped storage hydropower generating project. MRC has a competing proposal to use the mine pits for a regional solid waste landfill. The District intervened in the suit because EMEC initially proposed to use the District's Colorado River Aqueduct as the project water supply.

The mediation conference adjourned until December 12 in light of settlement negotiations between MRC and EMEC.

3. Mace Laurence v. Honeywell, Inc., MWD

This matter has been settled by payments to plaintiff and on the associated workers' compensation lien by codefendant's insurer in the total sum of \$88,500, \$67,500 to plaintiff, and \$21,000 to the workers' compensation lien holder. This action arose out of a fall by plaintiff on January 22, 1990, while he was working for a subcontractor of Honeywell, Inc., the District's general contractor for certain construction work being performed at the Jensen Filtration Plant. Plaintiff sued Honeywell, Inc., and the District asserting that unsafe and dangerous conditions, including cutting oil on the floor, were responsible for the fall and his serious resulting knee injury. As an additional insured under Honeywell, Inc.'s, comprehensive liability policy, as required by the specifications for the subject construction project, the District was defended and the settlement amounts paid by the insurance carrier for Honeywell, Inc. The General Counsel's office cooperated fully in providing witnesses, access to the accident site, and appropriate documentation. Initial demands were in excess of \$280,000 but, after nonbinding arbitration proceedings and substantial negotiations, these matters were settled for the amounts indicated. This matter is now closed.

4. Rancon Hemet Properties, L.P. v. Hull, Hull v. Rancon, MWD

The District was served on October 13, 1993, with a cross-complaint by which defendant Hull seeks indemnity from the District. The underlying action was brought by Rancon Hemet Properties, O.P., seeking \$1.5 million in damages asserting that Mr. Hull was negligent or otherwise erred in appraising the McSweeny Ranch Properties obtained by the District for purposes of the Domenigoni Valley Reservoir Project. Mr. Hull, together with two other appraisers, was

retained by Rancon Hemet Properties, L.P, and the District to appraise those properties for purposes of arriving at an agreed upon purchase price pursuant to an agreement entered into between Rancon Hemet Properties, L.P., and the District in October 1991. After the appraisals were submitted in June 1992, the District and Rancon Hemet Properties, L.P., worked out an agreement whereby the District purchased the whole McSweeney Ranch Property, rather than a portion as originally anticipated. A like lawsuit has been brought against Warren Neville, which may be consolidated with the Hull proceeding. The District has not been named as a cross-defendant in that proceeding. The General Counsel's office will take all steps necessary to protect the District's interest in this matter.

5. Idelfonso Hechavarria v. MWD

On November 16, 1993, a settlement was reached with plaintiff in his federal civil rights lawsuit wherein plaintiff was reclassified and promoted from laboratory technician to junior chemist and was paid a compromise amount in lieu of legal fees, back pay, and compensatory damages. The settlement was offered in the context of a reclassification of all Metropolitan laboratory technicians to junior chemist. Hechavarria is a Metropolitan employee with an outstanding record who has been a laboratory technician since 1978. He was twice rated unqualified to bid on promotions because his chemical engineering degree was from the University of Havana. A subsequent study found Hechavarria's degree comparable to a bachelor's degree in chemical engineering from an accredited college or university in the United States.

B. Proceedings of Interest to Metropolitan

1. Rados/Northwest Pipe v. Santa Margarita Water District

This construction lawsuit, where the District was not a party but which directly affects the District, has settled in the amount of \$675,000. Pursuant to Board authorization, the District entered into a contract with Santa Margarita Water District (Santa Margarita) for the upsizing of the South County Pipeline in the fall of 1990. The District agreed to pay for upsizing costs, approximately 40 percent of total pipeline costs, agreed to pay for its share in total pipeline capacity once utilized by the District in the approximate percentage of 60 percent, and received an option to purchase the entire

pipeline good through December 31, 1994. Since June 1992, the District has in fact been using capacity in the pipeline and, pursuant to Board authorization, is responsible for 60 percent of the cost of the entire pipeline. Certain costs of the pipeline are still in the process of reconciliation and accounting. In mid-1992, at the end of construction, the general contractor, Steve P. Rados, Inc., (Rados) submitted a claim on behalf of itself and its principle pipe supplier, Northwest Pipe and Casing Company (Northwest Pipe) to Santa Margarita in the amount of \$5,577,798. That claim was denied and complaints and cross-complaints among Rados, Northwest Pipe, and Santa Margarita have resulted. The District is not a party to those actions but has cooperated fully, through the auspices of the General Counsel's office, with Santa Margarita in the preparation of appropriate documentation, discovery, depositions of witnesses, and expert consultations. Currently scheduled for trial in **February 1994**, the case has now settled for the sum of \$675,000, and the various actions dismissed. The settlement amount will be treated as a cost of the South County Project and the District is responsible for its share in accordance with the contract for upsizing of the South County Pipeline. This litigation is now concluded.

C. **Administrative Proceedings**

1. Bay/Delta Standards

The General Counsel and his staff continue to meet with and provide advice to the General Manager in preparation for the expected announcement by the Environmental Protection Agency of proposed standards for the Bay/Delta. In addition, members of the staff continue to participate with the General Manager's staff in meetings with other urban interests on these issues.

2. Colorado River Endangered Species Issues

The General Counsel's office continues to provide assistance to the General Manager with regard to the preparation of comments in response to the biological and economic analysis released by the Fish and Wildlife Service as part of the regulatory process to designate critical habitat for four endangered fish on the Colorado River. Our comments on the documents are due on January 11, 1994.

II. Resource/Environmental Issues1. Areias Water Transfer

Work continued with negotiations and preparation of appropriate documentation to consummate the water transfer arrangement with Areias Dairy Farms which has been previously approved by your Board.

III. Other Matters1. Real Property Acquisition

Negotiations and preparation of appropriate contractual documents were done for a number of acquisitions of real property for the Domenigoni Valley Reservoir Project and Central Pool Augmentation Projects.

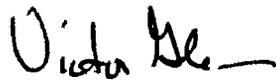
2. Financial Matters

A member of staff continued to work with the General Manager's staff and Special Counsel on the preparation of documents for a possible forward swap agreement which would be presented to your Board in December 1993 or January 1994.

A member of staff continued to provide assistance and advice to the General Manager with regard to legal issues arising out of the financial structure study and the proposed new rate structure which is before your Board in December.

3. Contracting Issues

A member of staff continued to work closely with the General Manager in the development and implementation of a MBE/WBE Business outreach program. Staff participated in the planning and development of three recently held workshops to discuss the program with community and industry-related interests.


for N. Gregory Taylor