

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

December 31, 1993

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

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

## **I. Litigation**

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

#### **1. Azusa Landfill Litigation (BFI v. SWRCB)**

After a December 8, 1993 hearing, the Los Angeles County Superior Court issued a tentative decision on December 10, denying the petition of the Azusa landfill owners to invalidate the State Water Resources Control Board's 1991 Order (SWRCB's Order) which had rejected expansion of the landfill. The landfill lies over a particularly critical groundwater recharge area for the Main San Gabriel Basin which provides drinking water supplies for one million people within Metropolitan's service area and underground storage for imported Metropolitan water.

In response to the court's decision, the California Attorney General filed a proposed judgment and statement of decision on December 17, subject to objections from the landfill owner, Browning Ferris Industries, Inc. (BFI). BFI has also filed a complaint against the state, seeking inverse condemnation compensation if SWRCB's Order rejecting the landfill expansion, is not invalidated.

#### **2. Eagle Mountain Litigation**

A member of the staff participated in a December 22 Mediation Conference to resolve an appeal before the U.S. Circuit Court of Appeals for the District of Columbia in Mine Reclamation Co. (MRC) v. Federal Energy Regulatory Commission (FERC). The mediator has requested each party to submit a confidential letter to him describing its respective interest in the appeal, by January 14, 1994.

Metropolitan intervened in the case pursuant to action at the Board's May 1993 meeting because it involves the validity of a permit FERC issued to Eagle Mountain Energy Company (EMEC) to study the feasibility of building a large pumped storage hydroelectric power generation facility using old mining pits near Metropolitan's Colorado River Aqueduct (CRA) and its Eagle Mountain pumping station. The permit also gives EMEC a preference for using federal resources if it should eventually acquire a FERC license for that facility. Metropolitan is a party to the underlying FERC proceedings because the permit application asserted that the facility would obtain its water through Metropolitan's CRA. EMEC proposes to file an application with FERC in April 1994 for a license to build and operate its proposed facility.

MRC has aggressively challenged the validity of the study permit because MRC has an ongoing proposal to use the same mining pits for a regional solid waste dump. The County of Riverside has approved the proposal and certified its environmental documentation, and the U.S. Bureau of Land Management (BLM) on October 20, 1993, approved a land exchange and two right-of-way grants which the landfill proposal requires. EMEC is challenging the county approvals in litigation before the Riverside County Superior Court (EMEC v. Riverside County) and the BLM approvals in an appeal to the Department of Interior Board of Land Appeals (In re Eagle Mountain Landfill Project). Several other entities have joined in those challenges, asserting environmental interests.

Metropolitan entered into a Memorandum of Understanding (MOU) with MRC one year ago pursuant to action at the Board's November 1992 meeting, to assure that the landfill proposal would not impair Metropolitan's CRA and would protect access to Metropolitan's Eagle Mountain CRA pumping facility.

On October 20, 1993, BLM issued a record of decision approving a land exchange between BLM and Kaiser Eagle Mountain, Inc. (Kaiser), and two right-of-way grants, one made exclusively to Kaiser for a railroad line designed to serve the proposed landfill site and a joint grant to Kaiser and Metropolitan for use of the existing Eagle Mountain Road, presently a public road providing access to Metropolitan's Eagle Mountain Pump Plant, which the county plans to vacate.

Several individuals and environmental groups, opposed to the proposed Kaiser/MRC landfill project, have filed notices of appeal challenging the right-of-way grants. Staff is currently reviewing the appeals which have been filed and will file whatever response is necessary to protect Metropolitan's access to its Eagle Mountain facilities.

### 3. Mono Lake Water Rights Litigation

A member of the staff appeared before the State Water Resources Control Board on December 16, to assist in Metropolitan's presentation of its case-in-chief in SWRCB's proceedings to amend the City of Los Angeles' Mono Basin water rights licenses. Dr. Timothy Quinn, Director of Metropolitan SWP and Conservation Division, was Metropolitan's only witness. He described Metropolitan's water supply reliability objectives and programs and stressed the importance of developing mutually beneficial regional water supply solutions and supporting voluntary water marketing by maintaining reasonably flexible water resource management, especially in the Central Valley, in light of increasing limitations on Metropolitan's water supplies.

### 4. Anaheim Hills Landslide Matters

Three lawsuits have been served upon Metropolitan by homeowners seeking recovery for damages allegedly sustained by their homes during a landslide in January of 1993. These homeowners have concerns that Metropolitan's Santiago Lateral may have contributed to their alleged damages. Investigations by Metropolitan are underway and the General Counsel will take all steps necessary to protect Metropolitan's interests in these matters.

#### B. **Proceedings of Interest to Metropolitan**

Nothing to report at this time.

#### C. **Administrative Proceedings**

Nothing to report at this time.

## II. Resource/Environmental Issues

### 1. EPA/Bay/Delta Standards

The General Counsel's staff assisted the General Manager in preparing appropriate responses and strategy to the proposed EPA standards for the Bay/Delta.

### 2. State Water Contract

Director of Water Resources Kennedy has issued an allocation of water for 1994 in which he has unilaterally reduced delivery orders of Metropolitan and other contractors to the highest amount utilized in the time period from 1980 onwards. Extensive time has been spent in preparing various responses and developing strategies.

3. Colorado River Endangered Species

A member of the staff has taken the lead in preparing comments in response to the proposed designation of critical habitat for four fish on the Colorado River by the federal government. It is anticipated that these comments will be filed after review by other California interests on behalf of most, if not all, of the California water contractors on the river.

4. Central Pool Augmentation Project

Members of the staff prepared appropriate documentation to consummate the purchase of the Eagle Valley West property as authorized by the Board at your December meeting.

**III. Other Matters**

Nothing to report at this time.

  
N. Gregory Taylor

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