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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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of the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held FEB 8 1994

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Daren E. Duff
Executive Secretary

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January 31, 1994

To: Board of Directors
From: General Counsel
Subject: Legal Department Report for January 1994

This report discusses significant matters with which the Legal Department was concerned during January 1994.

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Eagle Mountain Litigation

(a) Hydropower Study Appeal

Metropolitan submitted a statement of interest on January 6 to the mediation attorney designated by the United States Circuit Court of Appeals for the District of Columbia, for the appeal in Mine Reclamation Corp (MRC) v. Federal Energy Regulatory Commission (FERC). That appeal challenges FERC orders upholding issuance of a study permit to Eagle Mountain Energy Company (EMEC) for a large pumped storage hydroelectric generating project in abandoned Kaiser mining pits at Eagle Mountain near Metropolitan's Colorado River Aqueduct (CRA).

Metropolitan intervened in the appeal because EMEC initially asserted that it would obtain the needed water supply from Metropolitan's CRA. MRC, along with Kaiser Eagle Mountain, Inc., has a competing project for using the mining pits for a regional solid waste landfill. The court has issued a briefing schedule keyed to oral argument on May 17, with MRC's brief due February 15 and Metropolitan's brief due March 2.

The mediation attorney is exploring with the parties the possibility of settling some or all of the issues. EMEC is currently circulating a draft application for a license to build and operate the project on the basis of obtaining its water supply from groundwater in cooperation with Kaiser Eagle Mountain, Inc.

(b) Landfill Rights-of-Way Grants

In a related proceeding, the United States Department of the Interior Board of Land Appeals (IBLA) granted on January 4 Metropolitan's December 29 motion to intervene in an appeal by EMEC and 15 other entities, challenging a Bureau of Land Management (BLM) decision to grant two rights-of-way and a land exchange, involving MRC's proposed Eagle Mountain regional landfill proposal (Eagle Mountain Energy Co., et al. v. BLM, et al.).

One of the rights-of-way has been granted jointly to Metropolitan and Kaiser for existing Eagle Mountain Road which Metropolitan, for several decades, has used for access to its Eagle Mountain pumping plant. The county which now holds the Eagle Mountain Road right-of-way is in the process of abandoning it. Metropolitan entered into a memorandum of understanding with Kaiser and MRC in 1992 to assure that the landfill project would maintain the road to allow Metropolitan continuing access to its pumping plant, which specifically required Kaiser and Metropolitan to seek a joint BLM grant for Eagle Mountain Road.

The IBLA stayed implementation of the land exchange grant but refused to stay the rights-of-way grants, and set February 11 as the deadline for responding to the challenges to the BLM grants. The Legal Department is preparing responses to the challenges to the extent they relate to the access road for Metropolitan's pumping plant.

2. Bloom et al. v. Metropolitan Water District

This action brought by homeowners, adjacent to Metropolitan's Garvey Reservoir, who claim substantial damages to their homes allegedly as a result of water leaking out of the reservoir required significant work during the month of January as the matter had been set for trial. By a separate, confidential Board letter, the results of an all-day settlement conference are discussed.

B. Proceedings of Interest to Metropolitan

There is nothing to report at this time.

C. Administrative Proceedings

There is nothing to report at this time.

II. Resource/Environmental Issues**A. State Water Contract**

The General Counsel and his staff continued to work closely with the General Manager in an effort to resolve the state water contract allocation issues as previously discussed with your Board. The General Counsel also continued to work closely with O'Melveny & Myers, special counsel, and counsel for other state water contractors to ensure that Metropolitan's rights under the contract are recognized.

B. Bay/Delta Hearings

At a legislative hearing on January 24, 1994, SWRCB Chair John Caffery announced that the Board would reopen its Bay/Delta process, probably in April, for its triennial review of its water quality control plan.

Additionally, Metropolitan, along with other urban interests, continue to analyze and prepare alternatives to the proposed EPA standards on the Bay/Delta. Staff also continues to coordinate with the agricultural contractors on these issues.

C. Colorado River Endangered Species Critical Habitat

Metropolitan, through the Six-Agency Committee filed its comments to the Fish and Wildlife's proposed designation of critical habitat for four endangered fish on the Colorado River and some of its tributaries. By order of the federal district court in Colorado Wildlife Federation v. Turner, the Fish and Wildlife Service has until March 15, 1994, to finalize its designation. Parties, other than the California water contractors, have already filed 60 notices of intent to sue the service.

D. Water Transfers

1. Staff continues to work on the agreements necessary to consummate the Areias water transfer previously approved by your Board. Discussions now center upon appropriate security for Metropolitan's payments.

2. A member of the General Counsel's staff continues to participate on an in-house working team evaluating alternatives for financing payments for water transfers which Metropolitan may contract for over the next decade.

III. Other Matters

A. Contract Matters

Two members of the General Counsel's staff continued to work closely with the new Executive Assistant to the General Manager for Strategic Planning with regard to development and implementation of a minority business enterprise/women business enterprise program. Staff met with representatives of the City of San Diego whose program was recently overturned to assess what additional steps Metropolitan might take to ensure a successful program.

B. Headquarters Building

Two members of the General Counsel's staff assisted the General Manager in locating, interviewing, and selecting a chief negotiator for the new permanent headquarters building. The General Counsel's office is in the process of preparing the contract for the new negotiator.

C. Personnel

A member of staff assisted the General Manager's staff in the development of the Employee Earthquake Assistance Program.



N. Gregory Taylor

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