

at its meeting held MAR 8 1994

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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Daren E. Deff*  
Executive Secretary

February 28, 1994

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

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

**I. Litigation**

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

**1. Azusa Landfill Litigation**

The Los Angeles Superior Court entered judgment on February 1, 1994, denying the petition of Browning Ferris Industries (BFI) to overturn the State Water Resources Control Board order that had prohibited expansion of the Azusa solid waste landfill. The landfill overlies a critical groundwater replenishment area for the Main San Gabriel Basin which provides drinking water supplies for one million people most of whom reside in Metropolitan's service area. Metropolitan also stores imported water in that basin. BFI has until early April to challenge the judgment.

**2. Eagle Mountain Litigation**

**Appeals of BLM Grants**

Metropolitan filed on February 14, 1994, an answer with the Department of the Interior Board of Land Appeals (IBLA) responding to appeals challenging a U.S. Bureau of Land Management (BLM) right-of-way grant to Metropolitan and Kaiser Resources, Inc., for Eagle Mountain Road. Metropolitan has used that road for over half a century for access to its Eagle Mountain pumping plant and related portions of Metropolitan's Colorado River Aqueduct (CRA). Riverside County currently holds the right-of-way but plans to vacate the road in connection with proposed use of old Kaiser open-pit mines at Eagle Mountain for a regional solid waste landfill proposed by Mine Reclamation Co. (MRC) and Kaiser.

Eagle Mountain Energy Company (EMEC) and several individuals and associations challenged that grant along with concurrent BLM approval of a land exchange and a related right of way grant for the landfill project. Metropolitan's answer describes the importance of Eagle Mountain Road for CRA operation and maintenance, various protection incorporated in BLM's grant, and additional commitments which Kaiser and MRC have provided to assure that the landfill would be built and operated in a manner that will not impair Metropolitan's CRA or the quality of Metropolitan's Colorado River water supplies.

### **Appeal of FERC Orders**

The U.S. Court of Appeals for the District of Columbia granted, on February 8, 1994, Metropolitan's request to delay its intervenor's brief until after MRC filed its February 15 opening brief. MRC and Kaiser have appealed Federal Energy Regulatory Commission (FERC) orders that issued and validated a permit that allow EMEC to investigate the feasibility of building and operating a large pumped storage hydroelectric power generating project in the Eagle Mountain open-pit mines proposed for use by the MRC/Kaiser solid waste landfill.

Metropolitan intervened in the FERC proceedings and in this appeal because EMEC's application proposed to obtain its pumped storage water supply from Metropolitan's CRA. Metropolitan's brief is due March 2 and will be limited to issues related to the unavailability of the CRA and its water supply as the water source for EMEC's proposed hydropower project.

#### 3. Bay Institute et al. v. Babbitt

A coalition of environmental interest groups have sued the United States Fish and Wildlife Service because of its failure to designate critical habitat for the Delta Smelt. This action is the subject of a separate Board letter requesting authorization to intervene in the action.

#### 4. Bloom v. Metropolitan

Staff prepared a settlement agreement and release following the Board's approval in February of the Bloom v. Metropolitan action involving homeowners who alleged damages resulting from the leak of Garvey Reservoir, which is presently being reviewed by opposing counsel. It is expected that the matter will be concluded expeditiously.

**B. Proceedings of Interest to Metropolitan**

Nothing to report at this time.

**II. Resource/Environmental Issues****1. Bay/Delta**

Staff continued to work with special counsel and the General Manager's staff to prepare Metropolitan's comments on the proposed EPA standards for the Bay/Delta. In addition, the General Counsel, Assistant General Counsel, and a member of the staff continued to personally participate in the development of the Bay/Delta matrix management and strategy paper.

**2. State Water Project**

Following the successful resolution of the allocation issues for this year, the General Counsel continued to provide the legal support to the General Manager for negotiations regarding longer term issues on the contract, particularly as they relate to Article 18 of the contract.

**III. Administrative Matters****1. MBE/WBE Program**

Members of the staff continued to work with the Executive Assistant to the General Manager on the development and implementation of the MBE/WBE program to encourage the participation of minority and women-owned businesses in Metropolitan's contracts. Work included preparation of a procedures manual, development of certification criteria, and development of appropriate language to be included in contract documents.

**2. Permanent Headquarters Facility**

A member of the staff continued to work with Metropolitan's lead negotiator and coordinate with special counsel on legal issues arising out of negotiations regarding Metropolitan's new permanent headquarters facility. With the potential expanded scope of evaluation as requested by the Task Force at the February meeting, additional staff and special counsel time will be required to evaluate issues unique to discussions with MS Management regarding II Cal Plaza.

3. Los Angeles Superior Court Ad Hoc Committee on  
CEQA Writ Procedures

A member of the staff was appointed and has been participating with other appointed lawyers and judges in Departments 85 and 86 to develop written procedures to streamline the CEQA litigation process for those two Los Angeles Superior Court departments.

**IV. Other Matters**

Nothing to report at this time.

A handwritten signature in cursive script that reads "N. Gregory Taylor".

N. Gregory Taylor

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Monthly