

APR 12 1994

8-4



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Daren E. Hoff
EXECUTIVE SECRETARY

March 31, 1994

To: Board of Directors (Water Problems Committee--Action)
From: General Counsel
Subject: Water Softener Litigation (Water Quality Assn. v. Escondido)

Report

The San Diego Superior Court has issued a memorandum decision invalidating a 1991 Escondido City ordinance provision¹ that prohibited installation of self-regenerating automatic home water softeners.² The purpose of the ordinance was to assist Escondido's water reclamation program, by reducing salt loadings which those types of softeners add to the City's water system. Escondido based the ordinance on the Model Water Reclamation Ordinance which the San Diego County Water Authority (SDCWA) developed for its member agencies.

The court based its ruling on a determination that Health & Safety Code provisions creating a right to on-site water softening subject to certain requirements, preempt local prohibition of self-regenerating automatic softeners. It also ruled, however, that the ordinance did not constitute an unlawful taking of private property or violate due process or equal protection requirements.

The ruling has significance to Metropolitan because it may adversely affect water reclamation efforts in Metropolitan's service area, especially to those in San Diego. The SDCWA intervened in the case over a year ago in support of

¹ Section 6.5 (Prohibition on Use of Regenerative Devices) of Ordinance 91-3 (Establishing a Water Reclamation Plan). A copy of that section and Section 3.7 (defining Regenerative Water Softeners) is set forth on Attachment 1 to this letter.

² Water Quality Association and Coastal Cities Water Treatment, Inc v. City of Escondido (San Diego County Superior Court No. N53243). Escondido has been defending the case for two and a half years, through its City Attorney's Office, with assistance from the San Diego firm of Gray, Cary, Ware & Freidenrich.

the City. Its general counsel is requesting formal authority this month from his Board to (1) support an appeal of the ruling, (2) provide financial support to the extent necessary to offset Escondido's outside counsel bills and (3) request Metropolitan to lend its support to the appeal and agree to match the Authority's support for Escondido's outside counsel on a dollar-for-dollar basis in an amount not to exceed \$5,000 respectively.

Escondido, supported by SDWCA, filed objections to the ruling on March 17, and the Court has set a hearing on those objections for April 27. The City has also authorized its counsel to appeal the ruling if the court declines to remove the preemption ruling. That ruling also has statewide significance because the same issue has been raised by the automatic water softener industry in cases filed against similar ordinances in other areas of the state.³ The Legal Advocacy Committee of the League of California Cities has requested that all cities join in a friend of the court brief in support of an appeal and similar efforts are being proposed to the Association of California Water Agencies and other associations.

Our review of the court's 52-page memorandum decision indicates that the preemption ruling relies on an overly broad interpretation of the Health and Safety Code designation of a home water softener right, by extending it to a specific type of water softener and by overlooking water reclamation policy and directives of the California Water Code.

Accordingly, it is requested that the General Counsel be authorized to (1) participate in cooperation with SDCWA in support of the City of Escondido's Ordinance provisions limiting use of self-regenerating water softeners, in Water Quality Association vs. City of Escondido; and (2) make financial contributions of up to \$5,000 of the costs of Escondido's outside counsel in defending those provisions in that litigation.

Board Committee Assignment

This letter is referred for action to the Water Problems Committee because of its authority to study, advise and make recommendations with regard to policies regarding water conservation, reclamation, reuse and the use thereof, pursuant to Administrative Code Section 2481, subdivision (i).

³ Similar cases are pending in Santa Barbara County.

Recommendation

That the Board authorize the General Counsel to:

(1) Participate in cooperation with the San Diego County Water Authority in support of the City of Escondido's Ordinance provisions limiting use of self-regenerating water softeners, in pending litigation entitled Water Quality Association vs. City of Escondido, including participation in any related appellate proceedings; and

(2) Make financial contributions of up to \$5,000 of the costs of Escondido's outside counsel in defending those provisions in that litigation.


N. Gregory Taylor

ATTACHMENT 1**Excerpts from City of Escondido Ordinance No. 91-03
Establishing a Water Reclamation Plan**

Section 6: REGULATION OF WASTE DISCHARGE TO SEWERAGE SYSTEMS

6.5 PROHIBITION ON USE OF REGENERATIVE DEVICES:
Reclaimed water with high salt levels is not usable for the major City applications. It is therefore necessary to eliminate major sources of brine discharges. Self-regenerating water softeners are recognized as a major contributor of saline. It is the determination of the City that regenerative water softeners within the Hale Avenue service area may cause substantial harm or damage to potential users of reclaimed water; therefore, installation of any regenerative water softening device shall be prohibited. Existing on-site regenerative water softeners shall be removed upon resale of any residential property.

Section 3: DEFINITIONS

3.7 REGENERATIVE WATER SOFTENERS: A water softening device which automatically or manually renews its capability to remove hardness from water by the application of a brine solution or sodium chloride or potassium chloride salt to the active softening or conditioning material contained therein followed by a subsequent rinsing of the active material and which discharges to the waste disposal system at the location where such appliance is used. Nothing in this ordinance is intended to affect the sale, distribution or use of any water softening or conditioning appliance which uses a portable exchange unit and which does not discharge brine directly into the waste disposal system at the location where it is installed.

**ATTACHMENTS
TO
BOARD LETTER 8-4**



San Diego County Water Authority

A Public Agency

3211 Fifth Avenue • San Diego, California 92103-5718
(619) 682-4113 FAX (619) 295-2815

VINCENT F. BIONDO, JR.
General Counsel

April 7, 1994

MARGUERITE S. STRAND
Deputy General Counsel

TO: Board of Directors
VIA: Administrative and Legal Committee
FROM: Vincent F. Biondo, Jr., General Counsel
RE: Report and Recommendations on Appeal of Water Quality Association v. City of Escondido, et al., Case No. N53243
- (Action)

SUMMARY:

Judge Moon has issued a Memorandum of Decision in the above-referenced case. Although the ruling is in favor of the City of Escondido on almost all issues, the decision concludes that a portion of the City's ordinance is preempted by Section 4045 of the California Health & Safety Code. If the ruling stands, that would prevent the City from prohibiting the installation of self-regenerating automatic water softeners.

Escondido has filed a Motion for Reconsideration, which will be heard on April 27, 1994. If the motion is rejected and the decision becomes final, the City Council has authorized an appeal.

David R. Chapman, Escondido's City Attorney, in a letter dated March 10, 1994, has forwarded his City Council's request that the SDCWA continue to lend its name and active support for the Motion of Reconsideration. We have done that and joined the City's motion, since it was consistent with the direction previously given by the Board. The City Council has also asked that the SDCWA lend its name and active support to the appeal of the case and make a financial contribution to the extent necessary to offset outside counsel bills incurred by the City in an amount not-to-exceed \$10,000. A copy of the letter is attached.

It is my recommendation that the Board approve Escondido's requests. It is also recommended that the Board, by motion, direct staff to prepare an alternative ordinance regulating the self-

MEMBER AGENCIES

CITIES

- Del Mar • Escondido • National City
- Oceanside • Poway • San Diego

IRRIGATION DISTRICTS

- Santa Fe • South Bay
- Vista

WATER DISTRICTS

- Helix • Otay
- San Dieguito
- Vallecitos

MUNICIPAL WATER DISTRICTS

- Carlsbad
- Olivenhain
- Padre-Dam
- Rainbow
- Ramona
- Rincon del Diablo
- Valley Center
- Yuma

COUNTY

- San Diego (ex officio)

PUBLIC UTILITY DISTRICT

- Fallbrook

FEDERAL AGENCY

- Pendleton Military Reservation

Memorandum to: Board of Directors
Via: Administrative and Legal Committee
March 3, 1994
Page 2

regenerating automatic water softeners. Finally, it is recommended that the Board, by motion, formally ask the Metropolitan Water District to lend its name and active support to the appeal and make a financial contribution by matching the SDCWA's expense dollar-for-dollar not-to-exceed \$5,000.

FISCAL IMPACT:

The Escondido City Attorney's Office and the General Counsel will be actively involved in any future appeal. It is estimated that payments to Michael Hogan of Gray, Cary, Ware & Freidenrich, the City's Special Counsel, will not exceed \$10,000. Funds are available in the General Counsel's budget. Reimbursement of a portion of the expense will be sought from MWD.

RECOMMENDATION:

That the Board, by motion, take the following actions:

1. Authorize the General Counsel to lend the name of the SDCWA and its active support to the appeal of the above-referenced case, if that becomes necessary.
2. That the General Counsel be authorized to provide financial support to the extent necessary to offset the City of Escondido's outside counsel bills in an amount not-to-exceed \$10,000.
3. That the General Manager prepare a review of alternative forms of an ordinance that could replace the outright ban of automatic water softeners currently contained in the Authority's model ordinance.
4. That the General Counsel be authorized to request on behalf of the SDCWA that the Metropolitan Water District lend its name and active support to the appeal and agree to match the SDCWA's expense for the City's outside counsel on a dollar-for-dollar basis in an amount not-to-exceed \$5,000.

DETAIL:

Attached is the March 14, 1994 issue of *Water Systems News*, an industry newsletter published by Jonathan O. Hall. It is an outside look at the case from the industry point of view that reflects the differing interpretations that can be made of Judge

Memorandum to: Board of Directors
Via: Administrative and Legal Committee
March 3, 1994
Page 3

Moon's decision. It is an objective report that gives details about the case to help the Board make a judgment on the recommendations.

Judge Moon's 52-page decision finding that the City of Escondido's ordinance prohibiting self-regenerating water softeners was preempted by Health & Safety Code sections 4045-4048, has been carefully reviewed. We have discussed it in detail with attorneys for the City of Escondido, the Metropolitan Water District and the League of California Cities. Our office, working with the Escondido City Attorney and their Special Counsel, Michael Hogan of Gray, Cary, Ware & Freidenrich, has joined in a motion asking Judge Moon to reconsider his decision on the preemption issue. A hearing on the motion has been scheduled for April 27, 1994 at 9:00 a.m. in Department B at the Vista Courthouse. It is my intention to make an appearance and represent the SDCWA at the hearing.

Escondido and the Authority have made a substantial investment in this litigation in defense of the judgments made by the Authority in 1990-91, when the model Reclamation Ordinance was prepared and circulated. The litigation has been used by the industry to discourage other agencies from taking steps to protect the quality of their water supply. The City of San Diego has delayed adoption of similar regulations, in part, due to the pendency of this litigation. If the Court of Appeal reverses Judge Moon, then our member agencies can continue to use the model ordinance, and those agencies that have been hesitant to adopt an ordinance can move ahead. If Judge Moon's decision is affirmed, it will be clear that other courses of action must be considered. The primary alternative is to ask the Legislature to clarify that it was never their intention to preempt local regulation, particularly since that would frustrate the state's own goals for reclaimed water. A final determination of the preemption issue by an appeal, if it becomes necessary, is recommended.

It is also recommended that the Board approve Escondido's request for financial assistance. The City has been bearing a heavy burden in defending the case. They have prevailed on all of the causes of action specific to the City of Escondido. The judge found for the City in deciding the ordinance did not take private property in violation of the Fifth Amendment, violate Water Quality Association's procedural due process rights, deny Water Quality Association substantive due process rights, deny Water Quality Association equal protection of the laws or violate Water Code sections 13550 and 13551. The only remaining issue, the preemption question, is essentially a legal issue that would apply to all of the Authority's member agencies that adopted the model ordinance. Since a favorable decision will be of substantial benefit to the

Memorandum to: Board of Directors
Via: Administrative and Legal Committee
March 3, 1994
Page 4

Authority's member agencies, it seems to me to be consistent with the approach taken in other areas for the Authority to make a contribution. Funds are available in the General Counsel's budget. Essentially none of the monies budgeted for outside counsel have been spent this year. Even with the authorization of this expenditure, more than \$70,000 will be returned to the general fund.

It is clear Judge Moon was troubled by an ordinance, which totally prohibited a business from selling its product. It seems to me that we should consider an alternative that could meet a substantial portion of the SDCWA's goal, while responding to the Escondido case. The General Manager suggests preparation of a review of alternatives that could replace the outright ban, in consultation with our member agencies. That has been included in the recommended actions for approval by the Board.

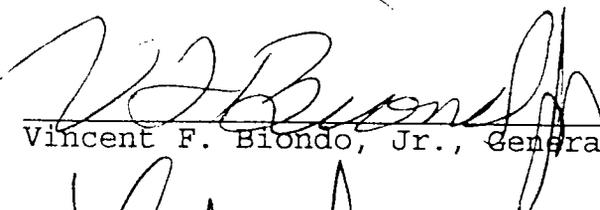
If this decision stands, the ability of many public agencies throughout the Metropolitan Water District's service territory to reclaim water will be adversely affected. All of the same reasons that would lead SDCWA to become involved in the appeal, apply with equal force to MWD. It is, therefore, recommended that the Board formally ask MWD to participate in the appeal and match the Authority's contribution toward Escondido's outside counsel on a dollar-for-dollar basis. A not-to-exceed budget for the appeal will be obtained from Mr. Hogan. The Escondido City Attorney and General Counsel believe the total will not exceed \$10,000. Therefore, it seemed appropriate to request MWD to match our contribution in a not-to-exceed amount of \$5,000.

This is an important case. It was presented to the Legal Advocacy Committee of the League of California Cities. That committee voted unanimously to urge all California cities to join as a friend of the court in an appeal. That is the strongest action the committee can take. If approved by the Board of Directors, and they almost always do approve their committee's recommendations, a mailing will be sent to all of California's approximately 465 cities. A brief writer will be solicited and the preparation of an amicus brief coordinated by the League's General Counsel. There was good support for the case in Northern California, and we hope that the brief writer will come from a major city in that portion of the state. We will also be bringing the case to the attention of ACWA's Legal Affairs Committee and asking for their support. Finally, Jeffrey G. Scott, Vallecitos' General Counsel, has already sent a copy of the decision to the Chairman of the California Association of Sanitation Agencies with the request that the item be placed on the May 6, 1994 agenda at their attorneys' committee meeting. It is also my intention to ask

Memorandum to: Board of Directors
Via: Administrative and Legal Committee
March 3, 1994
Page 5

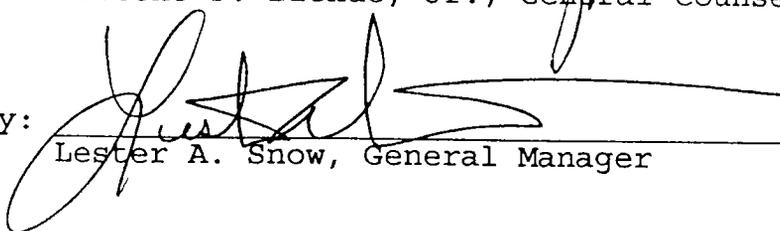
Mr. Scott to seek CASA's support for the appeal.

Prepared by:



Vincent F. Biondo, Jr., General Counsel

Approved by:



Lester A. Snow, General Manager

ps
Attachment

David R. Chapman, City Attorney
 Jeffrey R. Epp, Assistant City Attorney
 Martin A. Grover, Sr., Deputy City Attorney
 (619) 741-6080 FAX (619) 441-7541

RECEIVED

MAR 11 1994

GEN. COUNSEL

March 10, 1994

Mr. Vince Biondo
 General Counsel
 San Diego County Water Authority
 3211 Fifth Avenue
 San Diego, CA 92103-5718

Re: Water Quality Association v. City of Escondido
 Case No. N53243

Dear Mr. Biondo:

The Escondido City Council has authorized this office, in conjunction with its outside counsel, to file the necessary appeal of Judge Moon's decision in the above referenced case, in so far as that decision concludes that the City of Escondido is preempted by Section 4045 of the California Health and Safety Code from regulating automatic water softeners.

Prior to filing an appeal, Judge Moon's decision must obviously be placed in final judgment form. As well, it is the intention of this office and the City's outside counsel to seek reconsideration of Judge Moon's decision, and I will discuss that subject with you separately. However, once all avenues of reconsideration have been exhausted and the decision finalized, the City Council has requested that we appeal the decision if it continues to preempt the City's regulations.

You will recall that when this case first originated, the City of Escondido solicited the assistance of the San Diego County Water Authority in defending the case, based in large part on the fact that much of the City's ordinance was founded upon the model ordinance developed by the Water Authority. The Water Authority agreed to cooperate in the defense, and handled the broader issue of "preemption" because that issue had broader implications for other agencies and the Water Authority. As you now realize, we have successfully defended this lawsuit in every respect except for the preemption issue.



**CITY OF
 ESCONDIDO**
 201 NORTH BROADWAY
 ESCONDIDO, CA 92025

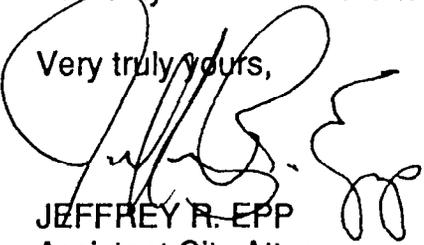
Jerry C. Harmon, Mayor
 Sid Hollins, Mayor Pro-Tem
 Richard A. Foster
 Elmer C. Cameron
 Lori Holt Pfeller

March 10, 1994
Mr. Vince Biondo
Page 2

Since the City of Escondido is the named defendant in the litigation, and this case also happens to be the most procedurally advanced of the similar cases around the state, we believe it is appropriate for the City to pursue the appeal. However, the City Council reminds the Water Authority of the fact that the City's ordinance is based on the Water Authority's model ordinance, the Water Authority's past commitment to assisting in this litigation and the regional and statewide importance of the issues. To that end, the City of Escondido specifically requests that the Water Authority continue to lend its name and active support to the motion for reconsideration and the appeal in this case, and also lend financial support (to the extent necessary to offset outside counsel bills incurred by the City) in an amount not to exceed \$10,000.00. It is both Mike Hogan's and my anticipation that outside counsel fees should be well under this amount in any event.

To conclude, the City has every interest in aggressively litigating this case to a final conclusion and wishes to have the continued support of the San Diego County Water Authority. I look forward to your reply.

Very truly yours,



JEFFREY R. EPP
Assistant City Attorney

JRE/amm

cc: Honorable Mayor and Members of the City Council
Mike Hogan, Esq.

WATER SYSTEMS NEWS™

& HOME WATER REPORT™

BIWEEKLY NEWSLETTER FOR LEADING SEGMENTS OF THE WATER TREATMENT INDUSTRY

Special
Issue

WQA
Vs.
Escondido

Dear Executive:

COURT FINDS CALIFORNIA LAW VOIDS ESCONDIDO SOFTENER BAN City Council Says It Will Appeal

WSN&HWR has exclusively learned that the city of Escondido, CA, plans to appeal a decision prohibiting it from banning automatic water softeners. The action was approved at a city council meeting March 9.

In a comprehensive 52-page decision released Feb. 25 [see *WSN&HWR*: 3/7/94], San Diego Superior Court Judge David Moon ruled that Escondido's ban on automatic water softeners is "invalid and unenforceable." Judge Moon wrote that state law "protects access to on-site water softeners, including automatic water softener appliances."

He found that, "to allow local public agencies to super-regulate, particularly to the point of an outright prohibition of these appliances, invites a complete gutting of this water right." Judge Moon ruled that the city of Escondido is "permanently restrained from enforcing ...the ordinance."

It was only on the issue that a state health and safety law preempted the city's ban that the court agreed with WQA, but that was sufficient to overthrow the ban.

For the record, Judge Moon sided with the city on the several other complaints put forth by the plaintiffs against Escondido, including that the ban was "not arbitrary or unreasonable and substantially advances a legitimate public interest: the use of reclaimed water for purposes of preserving the common water supply of the region."

BACKGROUND

March 20, 1991. Responding to County Water Authority's encouragement to its member agencies to develop reclaimed water supplies, Escondido adopts a water reclamation plan, Ordinance 91-3, of which section 6.5 prohibits installation of automatic water softeners.

Oct. 11, 1991. Mitch Cohen, president of Coastal Cities Inc. buys RainSoft San Diego County dealership.

Oct. 15, 1991. WQA and Coastal Cities challenge the ordinance.

Jan. 3, 1992. WQA files amended complaint alleging six causes of action against city ban ordinance:

- fails to comply with California Environmental Quality Act (CEQA).
- is preempted by state law.
- violates due process/equal protection.
- is taking of property without compensation.
- declarative relief.
- injunctive relief.

Jan. 29, 1992. County Water Authority files first amended complaint in intervention seeking judicial declaration that ordinance is valid.

Oct. 12, 1993. Court denies WQA's first complaint (CEQA) because it was filed late, past the 180-day allowable period.

Feb. 25, 1994. Rulings On Ban:

- is taking of private property? NO
- violates due process? NO
- violates 14th Am. equal protection? NO
- is preempted by state law? YES

March 9, 1994. Escondido City Council authorizes city attorneys to appeal.

Continued on next page....

Judge Moon found "no disproportionate burden [had been] placed upon plaintiffs"; and it "does not violate the Equal Protection Clause of the 14th Amendment." Those findings notwithstanding, he cited three failed California Senate bills as implying "a rejection of an attempt to allow local regulation of water softeners."

WSN&HWR discussed the ruling with Jeffrey Epp, Escondido assistant city attorney; attorney Lyman Bedford, counsel for WQA; San Diego water authority counsel Vincent Biondo; and Art Montandon, attorney for Santa Maria, where a second lawsuit is approaching trial. We also have comments from WQA president Bill Dodd and regional program manager Carlyn Meyers.

JEFF EPP, Assistant Attorney, City of Escondido

WSN&HWR: What is the city's perspective on the decision?

EPP: We won on 90% of the case. To that extent we are pleased. but you've got to dodge *all* the bullets not just most of them. We lost on his interpretation of a single section of state law. Judge Moon rejected WQA's "regulatory" taking claim, procedural due process claim, substantive due process claim and equal protection claim and concluded that the ban was not in conflict with or preempted by water codes.

WSN&HWR: Will you appeal the decision?

EPP: The City Council met today [March 9] and agreed to appeal the decision. If we are not successful in getting Judge Moon to reconsider his decision, we will be filing an appeal with the 4th District Court of Appeal in San Diego.

WSN&HWR: If there was no taking of property, why could there be hearings on damages?

EPP: In the event that somebody was entitled to damages because of the city's preempted ordinance. As a matter of law I can tell you that they are not entitled to damages on that particular issue.

WSN&HWR: Can Escondido undertake the financial cost of appealing this decision?

EPP: We have plenty of money for an appeal and we will be looking to other public agencies to help us with that cost since this is an issue that concerns everyone not just Escondido.

WSN&HWR: How do you think this decision will affect the lawsuit in Santa Maria, CA?

EPP: I would encourage everyone to remember that this has been a nearly three year struggle and this is only one small set back. I feel very comfortable that we will eventually win the war. I remain optimistic on either getting Judge Moon to reverse himself or getting a Court of Appeal to reverse it.

Subscribe Now!

Please enter my subscription for:

WATER SYSTEMS NEWS & HOME WATER REPORT

// 1 YR (25 Issues) for \$435

// 2 YRS (50 Issues) for \$845

// Payment Enclosed. // Bill Me.

(International Subscribers Add \$43 For Air Mail)

Please Give Us Your Business Card Or Complete Below.

Name: _____

Title: _____

Company: _____

Address: _____

City: _____ ST _____ ZIP _____

Telephone: _____ Fax: _____

**GUARANTEE: CANCEL AT ANY TIME FOR FULL REFUND ON
UNUSED PORTION OF YOUR SUBSCRIPTION**

Publisher:

Jonathan O. Hall (804-336-6782)
4282 Main Street
Chincoteague VA 23336

Editor:

Annette Keen (518-382-0565)
1285 Pembroke Court
Niskayuna NY 12309

Editorial Assistant: Amoreena Kurtz
Research Associate: Vincent Morasco
Design & Production: Regina Hall

Mail To:

Water Systems News & Home Water Report
4282 Main Street
Chincoteague Island VA 23336
804.336.6782 • Fax: 804.336.1409

WSN&HWR: Is it time to have the California Legislature deal with this question?

EPP: WQA may well have brought that down on themselves. Judge Moon's decision, if it is not reversed in the courts, may be the catalyst necessary for the Legislature to give cities the authority they want.

LAD BEDFORD, Keck, Mahin & Cate, Attornies for WQA

WSN&HWR: Characterize the ruling in terms of what you could have expected?

BEDFORD: It's the best possible result we could get. Normally you don't get this kind of opinion at the trial level. I was pretty impressed by the amount of thought and time that the judge put into it.

WSN&HWR: Would it be hard to appeal?

BEDFORD: In my opinion it would most likely be upheld on appeal.

WSN&HWR: How does the decision impact the industry elsewhere in California?

BEDFORD: Unless this issue is decided by a Court of Appeal in California and is certified for publication, it is not binding legal precedent. This decision can certainly be noted by judges in other jurisdictions.

WSN&HWR: Is this a city-by-city battle?

BEDFORD: The answer is not clear cut. It is possible that this decision might influence another city involved in such an issue.

WSN&HWR: What's the impact of the decision on the Santa Maria, CA lawsuit?

BEDFORD: The preemption issue is absolutely identical in Santa Maria. That's the one finding we have that is not fact specific. The state statute preempts cities from passing laws banning water softeners.

WSN&HWR: What about the hearings Judge Moon said he will call for?

BEDFORD: Even though there cannot be a taking, he sees the possibility of damages resulting from the enactment of an invalid ordinance. A hearing date has to be set up to have that issue determined.

WSN&HWR: There may be damages awarded?

BEDFORD: Yes, there may be damages awarded to Coastal Cities [a local water conditioning dealer], one of the plaintiffs, along with WQA. Coastal Cities was precluded from selling water softeners for three and a half years in Escondido.

WSN&HWR: Have you estimated incurred damages to the plaintiff?

BEDFORD: We have an expert CPA who has computed the loss of income to Coastal Cities that resulted from their inability to do business in Escondido.

WSN&HWR: Can you disclose an amount?

BEDFORD: It's in the five figure area.

WQA REACTIONS

The Impact:

"We are hoping that this decision will influence people to work with our industry to eliminate the problems that they may have with our effluent."

A Statewide Solution:

"It's a reasonable goal to find a state-wide solution instead of fighting these issues on a local level. It's one of the reasons we decided to undertake the Escondido lawsuit. It's something we are thinking about...the Board of Governors has not formulated any plans, but that's been one of the elements of our thinking for some time."

-Bill Dodd, WQA President

Not Adverse To Reclamation:

"We've always believed water softening can co-exist with wastewater reclamation and our industry has done its part in response to environmental concerns. The latest generation of water softening units uses up to 50% less water and salt than the market norm just five years ago."

-Carlyn Meyer, WQA Regional Program Manager

VINCE BIONDO, General Counsel, San Diego County Water Authority

WSN&HWR: What are your thoughts on the judgment in WQA/Coastal Cities vs. Escondido lawsuit, in which the San Diego Water Authority is an intervenor?

BIONDO: As an intervenor, we are more focused on the policy issue and the regional implications. The judge gave careful consideration to several challenges brought by WQA to the ordinance. With only one exception he found absolutely no merit to any of them. The one objection was based on a state statute.

WSN&HWR: Will this be the final judgment?

BIONDO: A Superior Court judgment in California is the lowest court of general jurisdiction and on appeal it binds the two parties to the litigation but it does not bind anybody else.

WSN&HWR: Judge Moon ruled that the ordinance was invalid.

BIONDO: On the whole, the opinion was very helpful to those of us who are interested in water reclamation. He found 95% in favor of the city. He found a legislative problem, but assuming the opinion is correct, that's relatively simple to fix. It's a legal doctrine called preemption and if the legislature were to do that, and the decision stands, it would eliminate every other objection WQA could make.

WSN&HWR: How would you advise your constituent agencies who might find themselves in a similar situation as Escondido, given the decision of Judge Moon?

BIONDO: If one of my member agencies were to call me up today and ask, shall we continue to enforce such an ordinance, I'd say, yes. They're not party to the litigation and a trial court decision is not binding on them until we sort it out. If they asked me, should we adopt an ordinance tomorrow, my answer would be, this is a fairly comprehensive and thoughtful opinion and it deserves detailed and mature consideration. And we are going to do that. And it would be prudent to wait a few weeks until we have completed that process and can better let you know how we are going to recommend proceeding.

ART MONTANDON, Attorney for Santa Maria, CA.

WSN&HWR: How has the Escondido decision affected your thinking on the suit in Santa Maria?

MONTANDON: I've read the opinion and I don't agree with it. I believe that the point that the judge ruled against the city was actually the city's strongest point. The regional water quality control board's opinion is directly contrary to the judge's ruling.

WSN&HWR: Santa Maria is going on with its defense of its ordinance?

MONTANDON: Yes. We got rolled together with the County of Santa Barbara [which represents the Orcutt, CA] lawsuit. Their suit was trailing behind ours, but Judge St. John felt there was enough similarity that he would like to coordinate the proceedings. County counsel Claire McDonald is still in discovery.

WSN&HWR: If Escondido wins on appeal to an appellate court, and that decision is published, doesn't that decision then become binding on the whole state?

MONTANDON: It becomes binding on the trial judges but not on other courts of appeal. We are in another court of appeal district than San Diego.

WSN&HWR: How does one get a binding ruling for the entire state?

MONTANDON: Depending on which appeal is rendered second, either side has the option of appealing to the California State Supreme Court. One factor the court looks at is whether there are conflicting decisions from the lower courts of appeal. Another possibility is a bill to correct ambiguity in the law.