



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

APR 12 1994

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EXECUTIVE SECRETARY

April 1, 1994

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Audubon Society v. Riverside Co. Habitat Conservation Agency

On March 7, 1994, a member of the legal staff made a special appearance at a hearing which resulted in an order by the Riverside County Superior Court that Metropolitan, San Diego Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and Concordia Homes, Inc. be joined to a cause of action relating to the overall validity of Stephens' Kangaroo Rat (SKR) take authorization, within Riverside County, under the California Endangered Species Act (CESA). In addition to the City of Moreno Valley, the Riverside County Habitat Conservation Agency and the City of Corona, both of which brought the joinder motion, are already respondents in this action.

The CESA cause of action challenges the validity of a permit, and related agreements, issued by the Department of Fish and Game (DFG) which allows the County of Riverside, and various cities, to issue approvals to incidentally take the SKR. The approvals are issued contingent upon payment of a mitigation fee which is used to assist in the acquisition of habitat to protect the SKR. Metropolitan has obtained such approvals for various of its projects in Riverside County, including the Domenigoni Reservoir, through provision of habitat for the SKR. The essence of the CESA cause of action is that the agreement of the DFG to issue the permit is not valid since it can only legally allow take for "scientific, educational and management" purposes. If the existing permit is not upheld, extensive delays to those projects within

Riverside County, which involve incidental take of the SKR, could well result until a valid permit was obtained. Additionally, significant issues would arise among the respondents as a result of commitments made in reliance upon the validity of the permit. It is anticipated that trial on this cause of action will occur during this summer.

This litigation was originally filed in April, 1992, by petitioners Audubon Society and Friends of the Northern San Jacinto Valley challenging, on various grounds, governmental actions taken in regard to the proposed Moreno Highlands planned development project. In addition to the CESA action, causes, to which Metropolitan is not a party, alleged violations of the California Environmental Quality Act, CESA and failure to comply with provisions of the Government Code relating to general and specific plans are asserted.

2. Bloom et al. v. Metropolitan

The parties have signed and approved the Settlement Agreement and Release of this matter which involved claims for property damages to homes in the area adjacent to Garvey Reservoir.

3. Domenigoni Reservoir Eminent Domain Litigation

The first of the Eastside Reservoir eminent domain cases to reach the trial stage went to trial on March 8 in Riverside Superior Court. The case, Metropolitan v. Rucker, involved a vacant parcel of approximately 70 acres located adjacent to the San Diego Canal north of the reservoir. The trial lasted six days, with jury deliberations taking less than four hours. Metropolitan's appraiser testified to a value of \$1,085,000 based on a unit value of \$17,605 per acre for 61.63 net acres. The Rucker's appraiser testified to a value of \$2,100,000 based on a unit value of \$30,000 per acre for 69.88 gross acres. The differences in value reflected different opinions on the potential densities that would be allowed when the property was developed to residential use. The jury returned a verdict of \$1,638,000. Discussions with jurors after the verdict indicated that they gave the property a value of \$23,000 per acre and applied it to the gross acreage.

4. Dorri v. MWD

By opinion issued March 8, 1994, the Court of Appeal has unanimously affirmed the trial court's judgment rendered in favor of the District in all respects. This action was brought by plaintiff/appellant, a 46-year old engineer who was seriously injured when his bicycle was struck by a district automobile driven by a district employee on December 19, 1989, at the intersection of McBean Parkway and Singing Hills Drive in Valencia, California. After trial on this matter in July 1991, the trial court determined that the District and its employee were not negligent and gave judgment to defendants. The Court of Appeal has determined that the trial court's judgment was supported by substantial evidence, the appropriate legal standard. Unless plaintiff/appellant choses to petition the California State Supreme Court for review of this matter, a petition which is very unlikely to be granted, this Court of Appeal decision should end this matter.

5. Anaheim Hills Slide Cases

On March 15, 1994, the District was served with the last of 15 complaints on behalf of over 250 property owners in the Anaheim Hills area. These complaints assert causes of action for inverse condemnation and various torts for diminution in value and property damage resulting from the well-publicized landslides in Anaheim Hills which occurred beginning on or about January 17, 1993. The City of Anaheim and County of Orange are among the other named defendants. The District is named because it owns and operates the Santiago Lateral pipeline through the Anaheim Hills which plaintiffs assert leaks thereby contributing to high groundwater conditions in the area. In response to original concerns about the presence of the pipeline in the area of the slide activity, Metropolitan shut down the pipeline, inspected it carefully together with representatives of all other interested parties, and discerned no evidence of leakage. The General Counsel's staff is currently working with plaintiffs' attorneys to ascertain if there is any reasonable testing or analysis which can be performed to demonstrate lack of such leakage.

B. Proceedings of Interest to Metropolitan**1. Eagle Mountain Litigation**

A member of the legal staff participated at a March 24 meeting of the parties in Mine Reclamation Corp vs. FERC to explore settlement possibilities. The principal parties, Mine Reclamation, Kaiser and Eagle Mountain Energy, were unable to agree on a settlement at the meeting.

The case seeks to invalidate a Federal Energy Regulatory Commission permit issued nearly three years ago to the Eagle Mountain Energy Company for studying the feasibility of using Kaiser Resources abandoned mining pits at Eagle Mountain for a pumped storage hydroelectric power generating facility. The facility would be located near Metropolitan's Colorado River Aqueduct and Eagle Mountain pumping plant.

Mine Reclamation and Kaiser had earlier initiated procedures for using the same pits for a regional solid waste landfill. They have also entered into an agreement with Metropolitan to assure that the landfill project will not interfere with Metropolitan's facilities or operations.

Eagle Mountain Energy, on the other hand, unilaterally named Metropolitan's Colorado River Aqueduct as the source of water for its proposed pumped storage project. Metropolitan has accordingly intervened in the FERC procedures and in Mine Reclamation's appeal of the FERC orders that approved the permit to Eagle Mountain Energy.

Eagle Mountain Energy is expected to file an application with FERC in April for a license to construct and operate its proposed pumped storage project. The draft application Eagle Mountain Energy circulated earlier this year has substituted groundwater supplies in place of Metropolitan's Colorado River Aqueduct as the source of project water. However, it was not specific enough to assure that the proposed project would not interfere with Metropolitan's facilities or operations.

II. Resource/Environmental Issues**1. Colorado River Designation of Critical Habitat**

The United States Fish and Wildlife Service issued its final critical habitat designation which designates most of the Colorado River in the lower basin within the designation.

Staff is evaluating the next steps to be taken to ensure protection of Metropolitan's interests in the water and power from the river.

2. Bay/Delta Standards

Staff assisted in the preparation of comments filed in response to EPA proposed standards for the Bay/Delta.

3. State Water Project

Staff continued to spend a considerable amount of time assisting the General Manager in the ongoing efforts to resolve certain long-term issues regarding contract issues as they relate to water supply allocation matters.

4. Central Valley Improvement Act

Staff continued to assist the General Manager's staff with respect to guidelines prepared by the Bureau of Reclamation to implement the water transfer provisions of the act.

III. Administrative Matters

Nothing to report at this time.

IV. Financing Matters

Staff continued to provide support to the General Manager's staff with regard to the ongoing efforts with regard to the nexus study and agricultural water rate issues.

V. Other Matters

1. New Permanent Headquarters Facility

Staff continued to spend a considerable amount of time assisting the District's Chief Negotiator with regard to the ongoing evaluation of alternatives for the new headquarters facility.


N. Gregory Taylor