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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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EXECUTIVE SECRETARY

April 29, 1994

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Azusa Landfill Litigation

The time for appealing the Los Angeles Superior Court judgment upholding the State Water Resources Control Board's (SWRCB) rescission of a 1988 Regional Board permit for expanding the Azusa Solid Waste Landfill overlying the Main San Gabriel Groundwater Basin (Basin) ended earlier this month. Since the landfill owner, Browning Ferris Industries, Inc., did not file a notice of appeal, the denial of the expansion has become final.

The only portion of the case (Browning Ferris Industries, Inc. v. SWRCB) still remaining consists of three causes of action against the state for compensation for inverse condemnation based on SWRCB's rescission of the landfill expansion permit. While Metropolitan intervened in the case in support of SWRCB's rescission order, it is not a party to the remaining portion of the case.

This effectively marks a successful conclusion to efforts Metropolitan initiated five years ago, in cooperation with the Main San Gabriel Basin Watermaster, Metropolitan's member agencies in the area and others, to prevent a major expansion of solid waste disposal in a critical area of the Basin's groundwater recharge area. The Basin provides critical municipal water supplies for nearly one million people within Metropolitan's service area. Metropolitan has also stored imported water in the Basin for several years.

2. Eagle Mountain Litigation

Mine Reclamation Co. v. FERC

On April 15, 1994, Metropolitan filed with the United States Court of Appeals for the District of Columbia, a reply to Eagle Mountain Energy Company (EMEC) responding to assertions regarding proposed use of Metropolitan's Colorado River Aqueduct (CRA) for a proposed hydroelectric pumped storage project using abandoned mining pits near Metropolitan's Eagle Mountain pumping plant.

Mine Reclamation Corp. (MRC), which seeks to use the same pits for a solid waste landfill, initiated the case last year, to invalidate the Federal Energy Regulatory Commission (FERC) preliminary permit for the pumped storage project. Metropolitan intervened in the case because the permit identifies the CRA as the water source for the pumped storage project.

MRC filed an offer of settlement on April 12, 1994. Essentially, it proposes to dismiss the case and subordinate a related transfer of federal land for the waste disposal site, to the pumped storage project, should FERC grant a license for that project. In return, MRC seeks a FERC determination that the subordinated land transfer would not injure the value of the involved federal land as a hydroelectric site.

EMEC filed a reply on April 15, 1994, continuing its opposition to the land transfer, in a related proceeding before the Department of the Interior's Board of Land Appeals (EMEC v. BLM). Oral argument before the United States Court of Appeals is scheduled for May 17, 1994.

FERC Proceedings

EMEC's existing preliminary permit requires it to file its application with FERC for a license to build and operate the proposed pumped storage hydroelectric project by the end of this month. On April 12, 1994, Metropolitan filed a response with FERC opposing EMEC's requesting a waiver of FERC rules which require initiating proceedings before California's State Water Resources Control Board for water quality certification under section 401 of the Clean Water Act, prior to filing the license application. FERC denied EMEC's request on April 21, 1994.

3. Mono Basin Water Rights

Metropolitan filed a reply to the closing brief of the National Audubon Society and the Mono Lake Committee, with the State Water Resources Control Board (SWRCB) on April 29, regarding interpretations of water supply projections contained in Metropolitan's July 1, 1993 Bond Statements. The reply also reaffirmed that Metropolitan's ability to meet additional demands resulting from reduction in the City of Los Angeles' Mono Basin water supply presumes a regulatory commitment to maintain adequate flexibility in the state's water management system, particularly in the San Francisco Bay, San Joaquin-Sacramento River System.

The SWRCB has now completed its hearings on amendment of Los Angeles Mono Basin water rights licenses, which began last fall. The SWRCB decision is expected within the next several weeks. It will then be referred to the El Dorado County Superior Court which maintains continuing jurisdiction over five pending Mono Basin water rights cases challenging Los Angeles' Mono Basin water exports.

4. Shapell Industries, Inc., et al. v. Metropolitan

Dismissal was entered April 1, 1994, in this action, originally brought by a land developer, Shapell Industries, Inc., and two homeowners, against Metropolitan asserting that vibrations emanating from Metropolitan's Lower Feeder Pipeline (Pipeline) adjacent to their properties in Yorba Linda, California, had and would continue to interfere with the quiet enjoyment of their properties. Testing with sophisticated devices revealed low level vibrations detectible by sensitive persons in two-story homes emanating from the Olinda Pressure Control Station just upstream from plaintiffs' properties. Metropolitan temporarily altered Pipeline operations to minimize such vibrations and then worked out settlements with the individual homeowners based upon any diminution in value to their homes plus stipulated general damages in the sum of \$25,000 plus incidental costs. In exchange, Metropolitan received a vibration easement recorded against each of the homes. Those settlements were completed in 1992. Plaintiff Shapell Industries, Inc., as well as other developers in the area, own lands adjacent to the Pipeline where many additional homes are expected to be built. After significant studies,

Metropolitan determined that a vibration damper could be placed on the line and the test results have shown that it has entirely eliminated the vibration problems. In fact, as a by-product of this mechanical solution, air entrapment problems at the Diemer Plant have been reduced. The parties have agreed to dismiss the action and a cross-action which ends this case.

5. Lake Village Community Association v. County of Riverside et al.

This inverse condemnation and negligence action has settled for a Metropolitan contribution of \$3,000 to a total \$50,000 cash settlement. This action was filed by a homeowners' association asserting that its lakes silted up as a result of mud and debris which washed down into the lakes during the heavy storms of early 1991 near Temecula, California. The association asserted that certain real estate developments and permits for development, including the cut and fill of home pads and the development of a sports park, failed to appropriately provide for storm run-off and therefore caused damages to the lakes in excess of \$500,000. Metropolitan has an easement for San Diego Pipeline Nos. 1 and 2 just upstream of the lakes and it was asserted that a certain part of the silt came from erosion from Metropolitan property. No evidence of significant erosion was found by inspection by Metropolitan forces. After extensive discovery and pleading battles, plaintiff agreed to accept a total of \$50,000 from the several developer and public entity defendants and cross-defendants, plus certain future continuing commitments from the City of Temecula regarding operation and maintenance of an upstream desilting basin and provision of new facilities to better control silt build-up. The payment of the \$3,000 will end Metropolitan's involvement with this matter.

B. Proceedings of Interest to Metropolitan

1. Water Quality Assn. v. Escondido

On April 27, 1994, the San Diego Superior Court reaffirmed its prior decision invalidating automatic water softener limitations in the City of Escondido's water conservation ordinance. Escondido and San Diego County Water Authority have authorized an appeal which will be filed when the superior court decision becomes final, probably within the next few weeks. At its April meeting, your Board authorized the General Counsel to support that appeal.

2. Ward Valley Low-Level Nuclear Waste Litigation

The Los Angeles County Superior Court heard oral arguments on April 27 on suits by the Fort Mohave Indian Tribe, the City of Needles, and others to invalidate the California Department of Health Services' (DHS) license for building and operating a low-level radioactive waste disposal facility in Ward Valley, some 20 miles west of the Colorado River. The court deferred ruling pending further consideration of the significance of new information provided by scientists from the United States Geological Survey after DHS approved the project.

II. Resource/Environmental Issues

A. **State Water Project**

A member of the staff continued to work on legal issues associated with the proposed Los Banos Grandes Reservoir. At the present time, such work centers around the preparation of an agreement with the Department of Water Resources (Department) to enable the Department to continue to plan for this or an equivalent reservoir. Discussions also continued on resolving other long-term State Water Contract issues. In that connection, the proposed water transfer from the Kern County Water Agency to Westlands has been rejected by the Department.

B. **Bay/Delta Hearings**

The State Water Resources Control Board held its first workshop to develop a new draft water quality protection plan by the end of 1994. Metropolitan participated as part of the Urban Coalition/CUWA group.

C. **Chino Basin Demonstration Storage Project**

A member of staff has commenced informal discussions regarding the process for negotiating the agreements necessary to implement the existing Memorandum of Understanding.

D. **Colorado River**

A member of staff has continued to assist the General Manager's efforts with regard to resolution of issues associated with the designation of critical habitat for four endangered fish on the Colorado River. Included in that effort

is the preparation of a Memorandum of Understanding amongst the lower division states to fund a feasibility level study to assess alternatives which might be included in a multi-species habitat conservation plan.

III. Domenigoni Valley Reservoir Project

Work on the extensive eminent domain litigation continued on this project. The work included coordinating discovery requests and responses, working with counsel and appraisers on valuation evidence to be used at trial and working with the Right of Way and Land Division on settlements and new acquisitions. In accordance with the Board's adoption of a resolution of necessity in April, preparations to commence proceedings on those six parcels identified in the resolution were initiated.

IV. Inland Feeder

A member of staff has continued to work with the Right of Way and Land Division and the Project Engineers on various legal issues related to the acquisition of the right-of-way for the project, including the proposed method for valuing certain properties and the identification of the property rights to be acquired.

V. Administrative Matters

Nothing to report at this time.

VI. Financing Matters

Work continued with regard to legal issues associated with the implementation of the new water rate structure, in particular efforts to ensure issues with regard to the nexus study are addressed.

VII. Other Matters

A. New Permanent Headquarters Facility

Staff continued to assist the General Manager and Metropolitan's lead negotiator, Richard Volpert, in the documentation and negotiations for the new permanent headquarters.

B. A member of the legal staff participated at the Third Annual CLE California Water Law program on April 14, 1994, describing the relationship between groundwater quality and quantity, in light of Metropolitan's ongoing efforts within its service area.



N. Gregory Taylor

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