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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Daren E. Hoff*  
EXECUTIVE SECRETARY

June 27, 1994

To: Board of Directors (Legal and Claims Committee--Action)

From: General Counsel

Subject: Participation of Metropolitan as Amicus Curiae in Appeal of  
County of Orange v. Santa Margarita Water District

Report

In County of Orange v. Santa Margarita Water District the superior court has indicated that it will rule that the Santa Margarita Water District (SMWD) must pay for the relocation of its underground facilities in an Orange County street for a project of the Foothill/Eastern Transportation Corridor Agency (FETCA), a joint powers authority, to construct a toll road. The SMWD facilities are in the street pursuant to an Orange County permit requiring that SMWD relocate its facilities at its expense for street improvements. Orange County is a member of FETCA and, asserted that, under its permit, SMWD was responsible for paying for the relocation of its facilities for this project. Orange County also asserted that SMWD was responsible for paying for the relocation of its facilities when the relocation is required for a proper governmental use of the streets for the traveling public.

In ruling for the County of Orange, the superior court will reject SMWD's contention that FETCA, as a separate public entity, cannot rely on the Orange County priority in the street to require that SMWD pay for the relocation of SMWD facilities. SMWD was in the street before FETCA and claimed that case law dictates that, as the subsequent entity in the street, FETCA must pay for the relocation of SMWD facilities. SMWD also contended that the toll road did not constitute a street improvement project.

SMWD will appeal this decision and has asked Metropolitan's General Counsel to participate in this appeal on their behalf as amicus curiae. The Association of California Water Agencies (ACWA) has already informed SMWD that it will arrange for a brief to be filed on its behalf.

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Metropolitan could be significantly affected by the outcome of this litigation and should participate in the appeal of this lawsuit. Metropolitan, in the past and currently, has faced the same type of legal dispute as is now facing SMWD. A current dispute which could be affected by an appellate decision in this case relates to the impact of the planned Alameda Corridor Project on Metropolitan facilities. This is a project of the Alameda Corridor Transportation Authority (ACTA) to facilitate highway and railroad access to the ports of Los Angeles and Long Beach. Affected Metropolitan facilities are located in County of Los Angeles streets pursuant to the Metropolitan Water District Act and Los Angeles County permits. It would cost millions of dollars to relocate and protect the Metropolitan facilities affected by this project. Like SMWD in its lawsuit, Metropolitan has asserted that the County cannot impose these costs on Metropolitan because the Corridor Project is a project of another governmental agency.

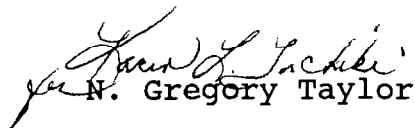
#### Board Committee Assignment

This letter is referred for action to the Legal and Claims Committee because of its authority regarding litigation and claims brought by or against Metropolitan under Administrative Code section 2461 (a).

#### Recommendation

#### **LEGAL AND CLAIMS COMMITTEE FOR ACTION.**

It is recommended that the Board of Directors authorize the General Counsel to file an application for leave to provide a brief as amicus curiae on behalf of SMWD in the appeal of County of Orange v. Santa Margarita Water District.

  
for N. Gregory Taylor

SES:pmsm  
board/smwd.bdl