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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. [Signature]
EXECUTIVE SECRETARY

August 31, 1994

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

1. Arizona v. California III (Indian Boundary Dispute)

A homeowners group in the disputed area of the Colorado River Indian Reservation has filed a motion to intervene in this action which Metropolitan commenced to determine the validity of certain Indian water rights along the lower Colorado River. The motion asserts an interest in the land itself, and asserts that the land belongs to the federal government as public lands. The Special Master appointed by the United States Supreme Court to hear this matter has given the parties until the end of September to respond to the motion. It is expected that Metropolitan will oppose the motion since this is a water rights case and not a land title dispute.

2. Eagle Mountain Proceedings

a. **Pumped Storage Project Licensing**

On August 12, 1994, the Federal Energy Regulatory Commission (FERC) allowed the Eagle Mountain Energy Company (EMEC) an extension until September 2 to answer motions by Kaiser Resources, Inc., and Mine Reclamation Corporation (MRC). Those motions request FERC to reject EMEC's application for a license to build and operate a pumped storage hydroelectric power generation project in empty mining pits on Eagle Mountain near Metropolitan's Eagle Mountain Colorado River Aqueduct pumping plant.

EMEC is currently revising its application pursuant to FERC's August 3 determination of deficiencies. EMEC filed a nonsubstantive amendment to its application on August 15, changing its corporate name to Eagle Crest Energy Company (ECEC).

California's State Water Resources Control Board (SWRCB), on August 23, notified the parties to the licensing proceedings that:

- (1) It had accepted ECEC's application for certification regarding the pumped storage project's impacts on water quality, as required by Section 401 of the federal Clean Water Act, as completed on April 25;
- (2) ECEC must submit to SWRCB by September 30 specific detailed information regarding the viability of the proposed use of groundwater as the project's water supply source; and
- (3) ECEC must prepare a final environmental document satisfying the requirements of the California Environmental Quality Act, with SWRCB as lead agency.

Metropolitan is a party in these proceedings and has requested additional ECEC studies to assure that the project will not adversely impact Metropolitan's operations and facilities.

b. Solid Waste Landfill Project

ECEC advised the U.S. Department of the Interior Board of Land Appeals (IBLA) on August 9 of the U.S. Court of Appeals August 5 decision which validated FERC's 1991 preliminary study permit for its pumped storage project. ECEC also requested IBLA to issue a final order on the basis of that decision, vacating the U.S. Bureau of Land Management's October 20, 1993 Record of Decision (ROD) that had approved a land exchange and two rights of way related to the Kaiser/MRC solid waste landfill project.

The IBLA had stayed the land exchange portion of the ROD on January 4, 1994, but had declined to stay the two right of way grants. One of those grants is to Metropolitan and Kaiser for use of Eagle Mountain Road which Metropolitan has relied on since the 1930s for access to its Eagle Mountain pumping plant and related facilities.

IBLA received briefs on the underlying ROD legal issues earlier this year. Those issues relate primarily to the land exchange and key to jurisdictional issues regarding section 24 of the Federal Power Act and the Federal Land Planning and Management Act. Metropolitan is also a party to this proceeding.

On August 9, Browning Ferris Industries, Inc. (BFI), a majority participant in MRC, announced its withdrawal from the Eagle Mountain Solid Waste Landfill project because of significant shifts in the waste disposal market in the greater Los Angeles area. MRC subsequently announced a reorganization to enable it to have sufficient funds to complete the permitting process for the landfill project and resolve related litigation.

3. Mono Basin Water Rights Proceedings

On August 12, 1994, the State Water Resources Control Board advised the El Dorado Superior Court that is coordinating the Mono Lake Water Rights cases, that it does not expect to complete its decision on amending the City of Los Angeles' water rights licenses in the Mono Basin until the end of September, apparently at the earliest. Metropolitan is a party to these proceedings.

4. Bay Institute et al. v. United States Fish and Wildlife Service et al.

Metropolitan and several other urban state water contractors have intervened in this litigation pursuant to a stipulation reached with plaintiffs and the federal government. Metropolitan will now participate in the litigation as a full party. Motions by the Kern County Water Agency, Westlands Water District, other agricultural agencies, and the Department of Water Resources to intervene and to transfer venue from the Northern District Federal Court (San Francisco) to the Eastern District Federal Court (Sacramento/Fresno), will be heard on September 16, 1994.

In addition, plaintiffs have filed a motion for summary judgment on all causes of action. It is anticipated that this motion will be heard in late October.

B. Proceedings of Interest to MetropolitanSan Juan Valley Basin Water Rights Decision

On August 12, 1994, the Court of Appeal issued its decision in San Benito County Water District v. Del Piero, a case involving the rights to use groundwater in the San Juan Valley Basin, an agricultural area near Hollister in Central California. The decision affirmed the trial court's injunction against transporting well water from the basin, about two miles for use on a planned residential development that was located within the basin's watershed. The groundwater supply is supplemented by water imported through the federal Central Valley Project.

The decision concluded that: (1) overlying rights in that basin are essentially limited to use on areas vertically over the groundwater basin, and (2) the basin has no surplus water available for appropriation for use in areas that do not directly overlie the basin. Although the decision does not rule directly on issues related to the presence of imported water, it inherently recognizes the rights of the overlying water district to store imported water. It also observes that it would be unreasonable to base a residential development on a water supply dependent on a temporary surplus attributable to imported water that would eventually be needed for other purposes.

This office participated on a committee of the Association of California Water Agencies that filed a friend of the court brief in support of the San Benito County Water District last year. We have also indicated our support of ACWA's August 26 letter to the Court of Appeal requesting that the decision be published, as a means of clarifying important aspects of California groundwater law.

II. Resource/Environmental Issues**1. State Water Project/ Bay/Delta**

Staff continued to support the efforts of the General Manager in the ongoing discussion with other State Water Contractors over disputes arising out of Article 18 of the State Water Contract.

Staff also assisted in the preparation of testimony and documentation for the State Water Resources Control Board hearings on the Bay/Delta, with its most recent hearing on September 1.

2. Colorado River Matters

Staff participated along with the General Manager's representatives in a two-day executive session workshop of the Colorado River Board to discuss issues of common concern to the California Colorado River contractors as they relate to ongoing discussions with the other six-basin states.

3. Areias Water Transfers

Areias Dairy Farms--documentation relating to the security for the letter of credit was reviewed and appropriate documents executed as part of this water transfer. Additionally, staff attended two public scoping hearing for the environmental review process.

III. Claims

A member of staff assisted the General Manager's staff in processing of claims and assistance necessitated by the Santa Monica Feeder Break on August 12, 1994. Several claims have already been settled.

IV. Contracts

AMP Negotiations--negotiation on this matter continued during the month of August with the parties exchanging various proposals to resolve several outstanding issues.

South County Pipeline Capacity Fee--following your Board's approval of the agreement in August, appropriate documentation was prepared and forwarded to the Santa Margarita Water District to consummate this transaction.

V. Legislation

Substantial time was spent during the month analyzing proposed state legislation and responding to requests for assistance from Metropolitan's lobbyist. In particular, considered effort was devoted to Endangered Species Act issues.


Gregory Taylor