

NOV - 8 1994

9-2



MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. Deff
EXECUTIVE SECRETARY

October 31, 1994

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

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

I. Litigation

A. Proceedings in Which Metropolitan Is a Party

- 1. Santa Margarita River Judgment (United States v. Fallbrook PUD)

The Santa Margarita River Judgment Steering Committee has scheduled a public meeting in November to receive comments on the Memorandum of Understanding on Operation of Domenigoni Valley Reservoir (MOU). Metropolitan has entered into the MOU with the United States, Fallbrook Public Utility District and Rancho California Water District which are the principal parties to the Santa Margarita River System Judgment.

The MOU provides that the Domenigoni Valley Reservoir will store only imported water although it is located on Warm Springs Creek, an intermittent tributary to the Santa Margarita River; and that its operation will not impair rights established by the Judgment. The MOU is similar to one Metropolitan entered into and the Court approved in 1975 for Lake Skinner which also stores only imported water and which is located on a larger tributary of the Santa Margarita River.

The Steering Committee meeting will be held at the offices of Rancho California Water District in Temecula and will be reported to the Federal District Court that has continuing jurisdiction over the 1967 Judgment in United States v. Fallbrook PUD, et al., which classified Santa Margarita River System water rights.

The Federal District Court will hold a subsequent hearing on Metropolitan's motion to incorporate the MOU into the Judgment.

2. San Gabriel Basin Water Rights Judgment (Upper San Gabriel Valley MWD v. Alhambra, et al.)

Metropolitan staff met with counsel for Miller Brewing Company and Upper San Gabriel Valley Municipal Water District at Miller's request, regarding its motion to remove the authority of the nine-person Watermaster to use reclaimed water to replace overdrafted groundwater. The Court has continuing jurisdiction over the Watermaster which it established under the 1972 Judgment allocating San Gabriel Basin water rights in Upper San Gabriel Valley MWD v. Alhambra, et al. The Court has scheduled a December 2 hearing on Miller's motion.

Miller is challenging Upper San Gabriel Valley MWD's water recycling project and has filed a separate suit in the Pomona branch of the Los Angeles County Superior Court asserting defects in the project's environmental impact report. On October 17, Miller requested that that case also be assigned to the Judge handling the San Gabriel Basin Watermaster Judgment proceedings.

Metropolitan is a party to the 1972 Judgment, supported the Court's 1991 grant of the authority Miller now challenges, and is encouraging efforts to resolve the matter by mediation.

3. Azusa Landfill Reopening

On October 7, Browning Ferris Industries, Inc. (BFI), owner of the Azusa Landfill which lies over a critical San Gabriel Valley groundwater recharging area, filed with the Regional Water Quality Control Board a Revised Report of Waste Discharge (ROWD) to support depositing municipal solid waste in the original unlined 80-acre portion of the Landfill for another seven years.

Metropolitan has participated over the past five years with its member agencies in the area and other local water agencies in judicial and administrative proceedings to prevent horizontal expansion of the Landfill. That participation has over the past few years taken the form of membership in the Azusa Landfill Task Force established to prevent expansion of the Landfill.

The Task Force met on October 12 to discuss the Landfill reopening and extending the Task Force for an additional three years. It is currently circulating an extension agreement and, through counsel for the Watermaster,

has requested the Regional Board to schedule a public hearing on the ROWD no sooner than mid-December.

In a related matter, BFI filed an answer and discovery requests in response to a common law complaint (San Gabriel Valley MWD v. BFI) against it for damages caused by the Landfill to the San Gabriel Valley MWD and its constituents. That District represents an area that lies outside of Metropolitan's service area and has a separate contract for service from the State Water Project.

4. MWD v. Johnson, et al.

After four days of deliberations, the jury in this condemnation matter returned a verdict with regard to six parcels of property that was \$98,000 over Metropolitan's final offer and \$155,911 under the plaintiff's final demand. This matter was tried for Metropolitan by the law firm of Avila and Putnam.

B. **Proceedings of Interest to Metropolitan**

Nothing to report.

II. Resource/Environmental Issues

A. **Bay/Delta**

Extensive work has been required to support the General Manger's efforts with regard to development of a Bay/Delta protective package. While a consensus was not reached with the various interests prior to the State Water Resources Control Board's hearing on October 19, the State Board did indicate their willingness to receive additional submissions.

B. **State Water Project**

As previously reported to your Board, James Waldo, a facilitator/mediator from Washington State was retained by the State Water Contractors to serve with regard to the Article 18 controversy. Two sessions have been held to date with several sessions planned for November.

C. **Drought Water Bank**

A member of staff assisted the General Manager's staff with regard to negotiations on the Drought Water Bank.

D. Semitropic

Extensive work was done during the month to ensure that Metropolitan's interests are protected in this agreement, the principles of the agreement have been previously approved by your Board.

III. Claims

Nothing to report.

IV. Other Matters

A. Finance Matters

A member of the staff continues to devote substantial amounts of time assisting the General Manager's staff with regard to issues arising out of the new rate structure.

B. Human Resources

Three separation agreements were prepared during the month for departing employees.

A hearing officer has upheld the District's decision to discharge an employee as a result of a lengthy, unapproved leave of absence to a foreign country.

V. Legislation

Nothing to report.



N. Gregory Taylor
General Counsel