



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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Doreen E. Doff

EXECUTIVE SECRETARY

December 31, 1994

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

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

**I. Litigation**

**A. Proceedings in Which Metropolitan is a Party**

**1. San Bernardino Valley Audubon Society, et al. v.  
City of Moreno Valley, et al.**

On December 27, 1994, the motion by the National Audubon Society for permission to file an amicus curiae (friend of the court) brief in support of the petitioners was heard and denied by the Court. On December 29, 1994, a one-day trial took place on the merits of the petitioners' contention that the Department of Fish and Game was not authorized under the California Endangered Species Act to issue a permit to the Riverside County Habitat Conservation Agency and its member agencies for "take" of the endangered Stephens' Kangaroo Rat. At the conclusion of the oral arguments, the Court took the case under submission and stated that it would not issue its decision for at least two weeks.

**2. FERC Filing re WSCC Unscheduled  
Flow Mitigation Plan**

On December 14, 1994, a member of the General Counsel's staff filed a Motion to Intervene before the Federal Energy Regulatory Commission in support of the Western Systems Coordinating Council's (WSCC) Unscheduled Flow Mitigation Plan. The WSCC is a voluntary organization established by electric utilities for the coordinated planning and operation of power generation facilities and transmission systems throughout the Western United States, Baja California and Western Canada. Metropolitan owns and operates a transmission system for operation of the Colorado River Aqueduct and is a member of

WSCC. The Plan is designed to relieve and mitigate the impacts of unscheduled power flows upon transmission lines. Such planning is necessary to minimize the disruption upon electric transmission systems due to earthquake, equipment failure, etc. Metropolitan's Motion to Intervene gives it standing to participate in further FERC proceedings, if any, in this matter. As of the date of this letter, Metropolitan is unaware of any opposition to the Plan.

3. Domenigoni Valley Reservoir Project

A member of staff assisted Special Counsel in the trial of legal issues with regard to the Domenigoni eminent domain matter. The taking of evidence was concluded and briefs are to be filed with closing argument to take place on January 13, 1995.

4. MWD v. Paul, Hastings, Janofsky & Walker

A member of staff continued to work with special counsel in this matter relating to the provision of legal services to Metropolitan with regard to the WCT transaction. The matter is expected to go to trial in early January.

B. **Proceedings of Interest to Metropolitan**

1. Westlands Water District v. United States

The Federal Ninth Circuit Court of Appeals has vacated the trial court order in the above action which enjoined the Secretary of the Interior from reallocating 800,000 acre-feet of water from Central Valley Project contractors to environmental uses. Westlands Water District had sued to enjoin the Secretary from dedicating the 800,000 acre-feet of water to the environment, as required by the Central Valley Project Improvement Act (CVPIA), until an Environmental Impact Statement (EIS) has been prepared under the National Environmental Policy Act. The trial court granted the injunction, but the Ninth Circuit reversed, holding that Congress intended the water to be reallocated immediately upon enactment of the Act, making an EIS unnecessary. A variety of other issues--including whether an EIS and consideration of economic impacts are required before an Endangered Species Act (ESA) jeopardy opinion can be issued and whether Westlands' water rights were "taken" by application of the CVPIA and/or the ESA--are still pending before the trial court.

## 2. Clean Water Act Criminal Liability

Metropolitan joined in a friend-of-the-court brief filed with the United States Supreme Court on December 30, urging the Court to review the Federal Court of Appeals decision in U.S. v. Weitzenhoff 35 F.3d 1275 (9th Cir., 1993). That decision significantly broadens criminal liability for violations of permits issued under the Federal Clean Water Act (CWA), of the type used by Metropolitan. The brief argues that the decision misconstrues the CWA and other statutes by imposing felony criminal liability for unknowing violations of permits.

The brief was filed by a coalition of private companies and public agencies, that also includes the California Association of Sanitation Agencies and the United States Chamber of Commerce. The two sanitation district managers that are the subject of the decision are already serving respective sentences of 33 months and 21 months. The General Counsel reported on this matter to the Board at its September and November meetings.

## 3. Baldwin v. County of Tehama

This action was, commenced by a landowner in the County of Tehama who desired to pump groundwater from land he owned in the County of Tehama for use on land outside the County. The County, by local ordinance regulated the exportation of groundwater from the County. The Court of Appeal ruled that the state had not wholly preempted the field of groundwater regulation and that the County therefore had discretion to impose certain regulations on groundwater uses. Staff is presently analyzing the case's potential impact on Metropolitan's existing and proposed groundwater programs.

## II. Resource Matters

### 1. Bay/Delta Hearings

ClubFed, the California Water Policy Counsel and the CUWA/Agricultural Group agreed on "Principals For Agreement on Bay/Delta Standards" on December 14, 1994. This agreement was the subject of the December 15 announcement in Sacramento. A member of staff worked with Special Counsel and the General Manager's staff on this matter. Specific terms of the Principals are the subject of a separate letter to your Board this month.

**2. State Water Project**

A member of staff spent considerable amount of time assisting the General Manager in the negotiations of issues surrounding Article 18 of the State Water Contract, the principles of the agreement which were discussed with your Board last month. Staff has spent considerable time during the month preparing for the drafting of appropriate documentation.

**3. Orange County Bankruptcy**

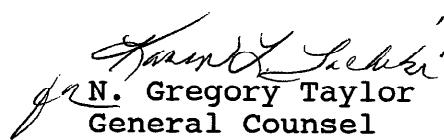
Staff spent a considerable amount of time analyzing various proposals made on behalf of the Orange County Water District relating to groundwater storage alternatives in Orange County. Immediate analysis of these various proposals was critical in light of the financial matters resulting from the bankruptcy of Orange County.

**III. Other Matters****Financial Matters**

Members of staff continued to assist the General Manager regarding legal issues arising out of the new rate structure. The details of which are the subject of a separate letter to your Board this month.

**IV. Claims**

Nothing to report.

  
N. Gregory Taylor  
General Counsel