

FEB 14 1995

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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Baren G. Duff*  
EXECUTIVE SECRETARY

January 31, 1995

To: Board of Directors  
From: General Counsel  
Subject: Legal Department Report for January 1995

This report discusses significant matters with which the Legal Department was concerned during January 1995.

**I. Litigation**

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

**1. Metropolitan v. Paul, Hastings, Janofsky & Walker, et al**

Trial in this matter commenced during January with the expected conclusion of the trial scheduled for on or before February 22. This action was commenced by Metropolitan to recover damages arising out of legal services rendered by Paul, Hastings, Janofsky & Walker with regard to Metropolitan's lease of office space at the WCT building. The matter is being tried by Special Counsel.

**2. Gloria Martinez v. Ron Watkins and The Metropolitan Water District of Southern California**

On January 3, the District was served with a complaint alleging sexual harassment in violation of the FEHA, public policy violations, defamation, negligent and intentional infliction of emotional distress, and negligent supervision. The General Counsel will take all appropriate steps to defend the District's interests.

**3. Enrique Alva v. The Metropolitan Water District of Southern California and John R. Wodraska**

The plaintiff filed a complaint for damages against the District and General Manager on December 21, 1994 and served the District on January 31, 1995. The complaint alleges causes of action based on breach of implied contract, breach of

the covenant of good faith and fair dealing, violation of public policy and age discrimination.

4. United States v. Fallbrook PUD

The Federal District Court in San Diego granted on January 19, Metropolitan's motion for approval of the Memorandum of Understanding and Agreement for operation of the Domenigoni Valley Reservoir (MOU), and incorporated it into the 1966 Santa Margarita River Watershed System Judgment. The MOU establishes criteria under which Metropolitan will operate Domenigoni Valley Reservoir consistently with downstream rights established by that Judgment. The United States, Fallbrook Public Utility District and Rancho California Water District, principal parties to that Judgment, entered into the MOU with Metropolitan.

5. Upper San Gabriel Valley MWD v. Alhambra

On January 10, Metropolitan filed a memorandum in opposition to Miller Brewing Company's motion to modify provisions in the San Gabriel Valley water rights Judgment, which allow the Main San Gabriel Basin Watermasters to use reclaimed water to assist in replacing groundwater overdrafts. Metropolitan, an original party to that Judgment, also appeared at the court's January 27 hearing on Miller's motion. A ruling is expected by February 10.

Miller's Motion represents part of its challenge to the San Gabriel Valley Water Reclamation project which Upper San Gabriel Valley MWD is developing. That District as well as the San Gabriel Valley MWD also opposed Miller's motion to modify the Judgment. Metropolitan advised the court of the increasing need to utilize recycled water, the potential impact of Miller's motion on regional water supply reliability and related concerns.

6. Azusa Landfill Proceedings

On January 24, Metropolitan joined with its member agencies in the San Gabriel Valley, the Main San Gabriel Valley Watermaster and other members of the Azusa Landfill Task Force, in a letter to counsel for the Los Angeles Regional Water Quality Control Board regarding noncompliance of the last remaining portion of the Azusa Landfill with State regulations and rulings.

The Task Force is seeking Regional Board action to close down the landfill which the landfill owner, Browning

Ferris Industries, seeks to operate for another seven years. The Task Force and its members previously prevented a proposed expansion of the landfill, which deposits municipal waste next to the Basin's groundwater recharge area.

7. Eagle Mountain Landfill

On January 26, the General Counsel and other members of the staff met with representatives of Kaiser Resources and Mine Reclamation Corporation regarding the status of the Eagle Mountain Landfill project which those entities are developing. Metropolitan has entered into a memorandum of understanding with them to assure that the project will be constructed and operated in a manner that will protect Metropolitan's Eagle Mountain facilities and the Colorado River Aqueduct.

8. United States v. Weitzenhoff

Pursuant to action taken at the Board's November meeting, Metropolitan joined with various commercial and other public entities in filing a friend-of-the-court brief in the United States Supreme Court requesting its review of a decision of the Ninth Circuit Court of Appeals which expands criminal liability under the Federal Clean Water Act. On January 23, the Court denied the request to review the decision.

B. Proceedings of Interest to Metropolitan

1. Westlands Water District, et al v. United States, et al

The United States Court of Appeal for the Ninth Circuit has reversed the trial court ruling in this case that the United States Bureau of Reclamation is required to prepare an Environmental Impact Statement before it may reallocate 800,000 acre-feet per year from Central Valley Project Valley contractors to the environment, as required by the Central Valley Improvement Act. In addition, on the request of most parties, the trial court has stayed further action in this litigation pending the outcome of the December 15, 1994 agreement on Bay/Delta principles between CALFED and interested parties.

II. Resource Matters

1. SWRCB Bay/Delta Hearings

The State Water Resources Control Board (SWRCB) has released its draft Water Quality Control Plan for the

San Francisco Bay/Sacramento-San Joaquin Delta Estuary and scheduled a hearing on the draft for February 23, 1995. Legal Department and General Manager's staff are working with an "ag/urban" group (including members of CUWA, State Water Contractors and the Delta Mendota/San Luis Canal Water Authority) preparing legal and technical comments to the plan. Written comments are due by March 10, 1995. The draft plan attempts, with some technical errors, to incorporate the December 15, 1994 Bay/Delta accord reached by CALFED and interested parties. The comments being prepared by the ag/urban group will be supportive of the draft plan and its standards, while pointing out certain technical errors and different points of view regarding SWRCB and Environmental Protection Agency authority to promulgate and implement Bay/Delta water quality standards.

General Counsel and General Manager staff have attended two meetings with upstream water users in the Bay/Delta watershed exploring the possibility for a consensus process to develop scenarios for sharing responsibility for mitigating the impacts of water development and use on the Bay/Delta environment, including meeting SWRCB established standards.

2. Proposed Endangered Species Act Listing of the Sacramento Splittail

The United States Fish and Wildlife Service has extended the date for determining whether to list the Sacramento splittail as a threatened species for six months, until July 6, 1995, and has requested additional comments on the proposal. The Service had proposed listing the splittail on January 6, 1994. The Endangered Species Act generally requires a listing decision to be made within 12 months of such a proposal. However, the Act authorizes a six-month delay in the decision where the Service finds "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination." The Service made such a finding here, based in part on new data and analysis submitted by the State Water Contractors and others. The extension is consistent with the December 15, 1994 Bay/Delta principles agreed to by CALFED and interested parties. Staff is working with other water supply entities to submit additional comments on the proposed listing.

3. State Water Project

Intensive efforts were devoted by a member of staff to drafting contract language to document the Monetary Principles. Significant work remains to be done and a member of the staff is a member of the Drafting Committee, as well as the Transportation Reservoirs Committee and the CEQA Compliance Committee.

4. Lower Colorado River Basin States/Tribal Discussions

A member of the Legal Department participated in an executive session of the Colorado River Board considering California's position in discussions with other Lower Colorado River Basin states and Indian Tribes regarding a regional solution to Colorado River water supply issues. Subsequently, the Assistant General Counsel and another member of the Department attended meetings of the Lower Basin States and of all Colorado River Basin States and Indian Tribes regarding the same issue.

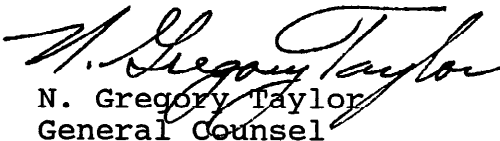
III. Other Matters

**Financial Matters**

Nothing to report.

IV. Claims

Nothing to report.

  
N. Gregory Taylor  
General Counsel