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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Loren E. Duff
EXECUTIVE SECRETARY

March 31, 1995

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

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

I. Litigation

A. Proceedings in Which Metropolitan is a Party

**1. Golden Gate Audubon v. SWRCB
(1991 Bay/Delta Plan)**

Sierra Club Legal Defense Fund (SCLDF) filed a motion to amend their complaint to add a cause of action based on violation of the Administrative Procedures Act. More importantly, they also seek to add allegations that the December 15, 1995 Agreement was signed in violation of NEPA, ESA, CWA and Porter-Cologne, and appear to claim that the SWRCB cannot, therefore adopt standards consistent with the Agreement. No hearing date was set for the motion and we believe that the Agreement is irrelevant to the litigation in any case, because the litigation is based on a claim that SWRCB's existing May 1991 plan is invalid. We understand that this motion has caused dissention within the environmental community who will meet soon to decide what course of action will be pursued. It is possible that some environmental groups will withdraw from the litigation. An opposition to the motion will be filed.

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

Metropolitan has filed, in Riverside County Superior Court, a Memorandum of Costs and Disbursements claiming \$3,556.00 for costs in this matter. The petitioners have already filed a motion to tax costs claimed by RCHCA and its member agencies; consequently, it is expected that a similar motion will be filed on our cost bill as well as costs claimed by the City of Moreno Valley and Moreno Highland Investors.

RCHCA and its member agencies have filed a Notice of Non-Opposition to Petitioner/Appellants' Motion to Consolidate Appeals.

3. Eagle Mountain Proceedings

Metropolitan has been involved for some time in two proceedings relating to development of a regional solid waste disposal facility and a pumped storage hydroelectric power generating facility in large inactive mining pits near Metropolitan's Eagle Mountain pumping plant for the Colorado River Aqueduct (CRA).

Metropolitan's interests are in protecting its CRA and other facilities. Metropolitan has entered into a memorandum of understanding with the waste disposal proponents, Kaiser Resources and Mine Reclamation Corp. (K/MRC), to assure that that project would not impair Metropolitan's operations or facilities. It is also participating in Federal Energy Regulatory Commission licensing proceedings for the power project for the same reason.

On March 10, the United States Bureau of Land Management (BLM) announced that it and Riverside County will complete a new environmental impact document (EIR/EIS) for the waste disposal project and a related land exchange with K/MRC, to correct deficiencies identified by the Superior Court last year. The same day, BLM filed a motion with the Department of the Interior Board of Land Appeals (IBLA) to remand BLM's related land exchange decision to it in light of the new EIR/S now being prepared.

The power project proponent, Eagle Crest Energy Co., along with others, initiated the appeal. Metropolitan is involved because the BLM Land Exchange decision was issued concurrently with a right-of-way grant to Metropolitan for continued access to Metropolitan's Eagle Mountain pumping plant facilities.

B. Proceedings of Interest to Metropolitan

1. Azusa Landfill Proceedings

On March 17, the Los Angeles Regional Water Quality Control Board announced that it will hold a public hearing on April 3 on continued disposal of municipal waste in the Azusa Landfill, which is adjacent to the San Gabriel Basin groundwater recharge area. The Legal Department staff has participated with the General Manager's staff and with counsel for Watermaster and

other members of the Azusa Landfill Task Force in preparing for that hearing.

The Regional Board also released a staff report and a technical discussion paper which concludes that the landfill is leaking pollutants into groundwater and that continued waste disposal will increase the potential for additional groundwater pollution. The Department of Health Services also advised the Regional Board on March 17, that it continues to support the efforts of the Main San Gabriel Basin Watermaster to prevent further disposal of municipal waste at the landfill.

2. Sweet Home Chapter of Communities v. Babbitt

In March the State Water Contractors, ACWA and Central Valley Project Water Association filed an amicus brief with the United States Supreme Court supporting the D.C. Circuit's decision that the definition of "harm" in the ESA does not include a mere modification of habitat. The United States appealed the decision.

3. Water Quality Association et al v. City of Escondido

Metropolitan has filed an application to file an amicus curiae brief with the Court of Appeal, Fourth District, Division One. This matter involves a dispute over the validity of an ordinance banning particular types of automatic water softeners because of the adverse water quality implications.

4. Westlands Water Dist. et al v. United States (Wenger Case)

This case is still stayed pursuant to agreement of all parties pending implementation of the December 15 Agreement. The Exchange Contractors unsuccessfully attempted to have the Court entertain its motion to, among other things, require Bureau of Reclamation to complete a programmatic EIS on CVPIA water transfers prior to approving any individual (Areias) water transfers.

II. Resource Matters

1. Bay-Delta Hearings

Metropolitan is preparing to support DWR and USBR in their petition to amend D-1485 for the narrow purpose of making it consistent with the December 15, 1995 Agreement. A hearing is scheduled for April 18. DWR and USBR propose to replace

certain existing fish and wildlife standards which have been superseded by the Agreement (primarily pumping limitations, Delta Cross Channel operation and Suisun Marsh requirements) and to allow DWR and USBR to share points of diversion as a way to minimize impacts on fish. The Delta and river flow requirements would not be added to the water rights permits because it has not yet been determined how responsibility for those flow requirements will be allocated; the two projects are meeting those requirements voluntarily. Metropolitan has filed a Notice of Intent to Appear, but it is likely that we will participate as part of a group such as through the State Water Contractors or through CUWA or the agriculture urban coalition.

Work also is continuing on implementation of the December 15 Agreement. A staff member is an urban representative on a "Category III Workgroup", made up of urban, agriculture, environmentalists and state and federal regulators, which is charged with developing a process for implementation of Category III measures for submission to our respective agencies by March 31, 1995. The group is attempting to develop an institutional framework to manage Category III funding and to choose projects for funding; develop criteria for use in selecting projects; identify funding sources; and develop a few consensus projects that could be implemented in 1995 or 1996. The group has been meeting weekly and will continue to do so through mid-April.

2. Water Transfers

Work continues on the amendment to the Areias agreement as approved previously by your Board. When the amended MWD-Areias agreement is done, Metropolitan will request the Bureau of Reclamation to suspend processing the Areias transfer application, which was agreed upon approach with Mr. Areias and the other Exchange Contractors in order to facilitate district to district transfers.

3. **Contracts**

(a) **Amp Agreement**

The AMP Purchase and Sale Agreement was executed by MWDOC and Orange County participating agencies and delivered to Metropolitan on or about March 1, 1995 and executed by Metropolitan on or about March 16, 1995. Two staff members have been participating in the preparation of additional documents as required. The transaction closed March 27, 1995, with recording of deeds and wiring of funds by Metropolitan to MWDOC in the sum of approximately \$17.7 million dollars.

Pursuant to the Purchase and Sale Agreement, remaining title problems regarding certain of the rights of way will be resolved over the next 12 months, at MWDOC expense, and physical inspection of the pipeline will be completed.

(b) **Calleguas Agreement**

Work continues on a draft agreement with Calleguas to provide labor to staff the Calleguas Filtration plant in accordance with the Board's approval in February.

III. Claims

Nothing to report.



N. Gregory Taylor
General Counsel