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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of General Counsel

Edward S. Taylor
EXECUTIVE SECRETARY

April 30, 1995

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

RECOMMENDATION:

For information only.

Gregory Taylor
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General Counsel

EXECUTIVE SUMMARY:

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

DETAILED REPORT:**I. Litigation****A. Proceedings in Which Metropolitan is a Party****1. SWRCB Hearing on Petition to Modify D-1485**

The SWRCB held three days of hearings on the petition by DWR and USBR to modify certain conditions imposed on their water rights permits in D-1485. The original purpose of the petition was to eliminate a few conditions that were inconsistent with, or replaced by, requirements agreed upon in the December 15, 1994, Bay/Delta Principals Agreement. Additionally, DWR and the USBR requested that each project be allowed to divert at the other's pumping facility when appropriate. The purpose of such changes would be to increase flexibility and reliability and to reduce entrainment impacts on fish. This later request has engendered controversy with a number of environmental groups as well as some San Joaquin water users. The CUWA/Ag groups suggested that DWR and USBR work through Principals Agreement Operations Group to reach an agreement on conditions under which water could be diverted in excess of existing limitations, with any agreement reached submitted to SWRCB for approval. This compromise approach seems to have been received favorably by the various interests.

2. Category III-Bay/Delta Principals Agreement

Work is continuing on implementation of the Category III program. An MOU for management of the program and the current \$10 million fund over the near-term has been completed and circulated for approval.

3. Eagle Mountain FERC Proceedings**(a) SWRCB Intervention**

The State Water Resources Control Board (SWRCB) filed a motion with the Federal Energy Regulatory Commission (FERC) on April 12, to intervene in licensing proceedings for a 1000 Megawatt pumped storage power generating at Eagle Mountain, near Metropolitan's Colorado River Aqueduct (CRA) and Eagle Mountain pumping plant. Metropolitan filed a similar motion last year to protect its CRA and related interests.

The project proponent, Eagle Crest Energy Company, must obtain SWRCB approval pursuant to Section 401 of the Federal Clean Water Act. SWRCB's motion asserts that the project has the potential to impair water quality, create groundwater overdraft, and cause violation of Regional Board regulatory orders for the Eagle Mountain Municipal Waste Landfill.

(b) United State Department of the Interior Intervention

Later that same week, the United States Department of the Interior filed a motion to intervene in opposition to the grant of a license for the pumped storage project, on behalf of the National Parks Service and the National Biological Service. The motion asserts that the project would impair Joshua Tree National Park and various federal programs by, among other things, reducing groundwater supplies for the Park by creating two reservoirs that would change species composition and behavior and impair protection of the endangered Desert Tortoise.

(c) United States Department of the Interior Intervention

On April 19, SWRCB denied the energy company's request for Section 401 certification because it failed to provide adequate water quality protection assurances and adequate documentation required by the California Environmental Quality Act (CEQA). SWRCB advised that the energy company may refile its 401 certification request, but listed five protection plans SWRCB will require to assure project compliance with water quality requirements.

SWRCB also indicated that the energy company might submit its 401 CEQA documentation as a joint environmental document that also complies with the federal National Environmental Policy Act documentation which FERC requires as part of the licensing process.

(d) Land Exchange Appeal

On April 27, the United States Department of the Interior Board of Land Appeals (IBLA) vacated the October 1993 decision of the United States Bureau of Land Management (BLM) that had approved a land exchange and right-of-way grants related to a proposed Eagle Mountain Municipal solid waste landfill. The proponent of the Eagle Mountain pumped storage hydroelectric power project, Eagle Crest Energy Company, and others appealed BLM's decision.

One on the right-of-way grants was to Metropolitan and Kaiser Eagle Mountain, Inc. for Eagle Mountain Road. Metropolitan has for many years used that road for access to its Colorado River Aqueduct Eagle Mountain pumping plant. The County of Riverside currently maintains the road and holds the right-of-way, but has indicated plans to vacate its interest in the road.

Earlier this year, BLM requested IBLA to remand the BLM decision in light of the need to supplement the environmental documentation for the proposed Eagle Mountain landfill as the result of a California Superior Court ruling last year that that documentation did not satisfy the California Environmental Quality Act (CEQA). BLM indicates that it and the County are undertaking a supplemental environmental review process to cure CEQA deficiencies.

4. Azusa Landfill Proceedings

The Los Angeles Regional Water Quality Control Board devoted nearly all of its April meeting to the ongoing resumption of waste disposal in a previously used portion of the Azusa Landfill. Metropolitan supported its member public agencies in the area and the Main San Gabriel Valley Watermaster through the Azusa Landfill Task Force, in requesting that the Regional Board stop any further disposal of municipal waste in

the landfill. That area of the landfill has no protective system for preventing leakage into the Basin and lies next to the Basin's groundwater recharge area.

The State Water Resources Control Board previously denied lateral expansion of the landfill because it poses a serious threat to groundwater quality. And the Regional Board issued a Cleanup and Abatement Order on February 28, directing the landfill operator, Browning Ferris Industries (BFI), to submit a workplan for an evaluation monitoring program in light of a United States Environmental Agency letter to BFI identifying the landfill as releasing volatile organic chemicals. Indeed, the Regional Board staff testified at the April meeting that the landfill is an unsuitable site for disposal of municipal waste and that its data shows that the landfill is leaking into the Basin.

However, the Regional Board failed to act on requests to stop any further disposal of municipal waste, apparently because of lack of showing that landfill contamination is currently impacting producing water supply wells. Instead, the Board Chair directed Regional Board staff to meet with BFI and the landfill opponents to develop a monitoring plan and to develop suggested alternatives for solving the existing siting deficiencies.

The Chair also directed the Board's staff to prepare a proposed permit for consideration in six months. Metropolitan is continuing to assist the Azusa Landfill Task Force in its efforts to prevent further disposal of municipal waste in the landfill as soon as possible.

B. Proceedings of Interest to Metropolitan

Nothing to report.

II. Resource Matters

A. Water Transfers

1. Areias staff continued to draft language and appropriate documentation to document the terms of the amended agreement as previously approved by your Board. Of particular concern during this process is to ensure the adequacy of security for payments made by Metropolitan.

2. Work also continued on an Orange County Water Storage Program with a member of staff participating in several negotiation sessions.

3. Work continued with the preparation of documents with regard to the North Las Posas and Chino Basin groundwater programs as well.

B. Lower Basin States Discussions-Lower Colorado River

A member of the staff participated in a two-day meeting of the technical committee charged with developing potential solutions to water supply issues associated with the lower Colorado River. This same group will meet again in mid-May to further refine the potential solutions with a goal of having a report to the principals of the lower basin states in late May to consider.

III. Finance Matters

A member of staff assisted the General Manager's staff with the preparation of appropriate documentation for your Board to consider the adoption of the stand-by charge at your May meeting and continued to work on other necessary implementing activities as they related to the new rate structure.

IV. Contract Matters**A. Permanent Headquarters**

Work continued on preparation of all necessary documentation for the headquarters project, such as preparation of environmental documentation. Work on the Development Agreement and associated documentation was completed and the documents were executed pursuant to previous Board authorization.

B. Calleguas Filtration Plant

A revised draft of the agreement, previously approved by your Board for Metropolitan personnel to staff a treatment plant for Calleguas, was distributed to the parties for their review on April 28, 1995. The Calleguas board has also approved the agreement in concept. Assuming successful negotiation of the few remaining issues, execution is anticipated about mid-May.

V. Claims

Nothing to report.

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