



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of General Counsel

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Karen E. Duff
EXECUTIVE SECRETARY

May 31, 1995

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

RECOMMENDATION:

For information only.

N. Gregory Taylor
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General Counsel

EXECUTIVE SUMMARY:

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

DETAILED REPORT:**I. Litigation****A. Proceedings in Which Metropolitan is a Party****1. MWD v. Paul Hastings**

On May 11, 1995, Metropolitan's Motion for New Trial was heard in Department 40 of the Los Angeles Superior Court before Judge David Workman. Metropolitan sought a new trial in the matter asserting that the jury verdict was contradicted by the evidence. While denying the motion, finding that the legal standard for reversing the jury's verdict had not been met, Judge Workman stated that had he been the trier of fact he would likely have reached a different conclusion. While the judge's statement supports Metropolitan's decision to pursue the action, it is not, in itself, a basis for appeal.

2. 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 Principles 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 Principles 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.

3. Category III-Bay/Delta Principles Agreement

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

4. San Gabriel Basin Proceedings**Water Reclamation Project**

On May 12, the Los Angeles County Superior Court issued a Statement of Intended Decision denying Miller Brewing Company's petition to limit the Basin Watermaster's discretion to use reclaimed water for recharging the San Gabriel Valley groundwater basin. The Court noted that the Legislature has established reclaimed water criteria for protecting groundwater quality in a cooperative manner by local,

state and federal agencies, including the Basin Watermaster and Metropolitan. It also noted that it has continuing jurisdiction over the Watermaster which was created by the Basin water rights Judgment in Upper San Gabriel Valley MWD v. Alhambra et al.

Miller's petition reflects its ongoing challenge to the Upper San Gabriel Valley MWD's proposed Water Reclamation Program that would assist in replenishing Basin overdrafts. Those overdrafts are currently fully replenished by imported water supplies from Metropolitan and San Gabriel Valley MWD (which imports water from the State water for the four Valley cities which are outside of Metropolitan). Metropolitan joined with Upper San Gabriel Valley MWD and San Gabriel Valley MWD, in opposing Miller's petition.

Miller is also challenging the Water Reclamation Program documentation in a separate case before the same Judge (Miller Brewing Co. v. Upper San Gabriel Valley MWD), which is scheduled for trial next month. Metropolitan is not a party to that case, but is a party to the Basin water rights judgment case.

5. Azusa Landfill Proceedings

At its May 15 meeting the Regional Water Quality Control Board denied the request of the Basin Watermaster on behalf of the Azusa Landfill Task Force to decide at its June meeting, whether to stop further disposal of municipal solid waste at the Azusa Landfill. Metropolitan, along with its member agencies in the Valley, are members of the Task Force. The Landfill is located in a sand and gravel pit next to the main Basin groundwater replenishment facility and has been operating for nearly forty years.

The Regional board stated that it would defer its decision until October, although it issued a Cleanup and Abatement Order for the Landfill on February 28. The Department of Health Services presented a letter at the May 15 meeting that the site is unsuitable, is leaking leachate, has caused groundwater contamination and threatens to impair beneficial use of the groundwater. The Manager of Metropolitan's Water Quality Division presented a statement at the meeting emphasizing the importance of protecting the groundwater supply from contamination and related cleanup costs.

The State Water Resources Control Board has previously rejected efforts by the Landfill owner, Browning Ferris Industries (BFI), to expand the acreage of the Landfill, finding that even installation of a lined containment system, would not assure operations in the initial unlined 80-acre Landfill, indicating that it planned to place several million additional tons of municipal solid waste in it during the remainder of this decade.

6. Eagle Mountain Landfill

On May 12 the U.S. Bureau of Land Management notified Metropolitan that it is considering a land exchange with Kaiser Eagle Mountain, Inc. The proposed exchange is related to Kaiser's proposed solid waste landfill near Metropolitan's Eagle Mountain pumping plant on the Colorado River Aqueduct. Metropolitan has entered into a Memorandum of Understanding to assure that that project would not impair Metropolitan's facilities and other interests. A similar exchange was recently vacated to allow additional environmental and other analyses.

7. Ward Valley

On May 11, a Committee of Scientists appointed at the request of the Secretary of the Interior and under the auspices of the National Academy of Science (NAS) issued the results of its examination of seven issues raised by three federal geologists regarding aspects of the proposed Ward Valley Low-Level Radioactive Waste Disposal Project. In a 212-page summary, the Committee indicated that the Project would not impact Colorado River supplies and was unlikely to contaminate local groundwater. However, the summary suggested some additional studies and monitoring measures.

California's Department of Health Services (DHS) issued a license for the project in September of 1994, subject to transfer of the site which is located on federal land some 20 miles west of Needles, California. The Los Angeles Superior Court basically approved the licensing process last summer, but

directed DHS to reevaluate its issuance of the license in light of the seven issues which the NAS Committee has just reviewed (Fort Mojave Indian Tribe, et al. v. DHS). Opponents of the Project have appealed the Superior Court judgment, and DHS has cross-appealed the need for further review of the seven issues. Oral argument before the California Court of Appeal is expected this summer. Metropolitan is not a party to that action.

B. Proceedings of Interest to Metropolitan

1. Baldwin v. County of Tehama

The California Supreme Court has denied plaintiffs' petition seeking review of the appellate court's decision that state legislation does not preempt the field of groundwater regulation, so that, in general, counties have authority to pass appropriate groundwater regulation. The Association of California Water Agencies had supported the petition and also requested that the Supreme Court "depublish" the appellate court decision, removing its precedential force; the Supreme Court did not act on the request to depublish. The holding of this case is narrow, affirming only that a county has the power to pass some type of groundwater regulation, but did not consider how extensive or obtrusive the exercise of that power could be. The case has been returned to the trial court for resolution of plaintiffs' claims that the ordinance is procedurally flawed, that it violates the "reasonable use" mandate and that it "takes" overlying rights without compensation.

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.

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. Contract Matters

A. Permanent Headquarters

Work continued on preparation of all necessary documentation for the headquarters project, such as preparation of environmental documentation, and an agreement for architectural services.

B. Calleguas Filtration Plant

The Metropolitan/Calleguas agreement for Metropolitan to provide operators for the new Calleguas water treatment facility has been executed and is now in effect.

IV. Claims**Winchester Fire Claims**

The District has received Notice Of A Hearing For Petition For Relief From Claim Requirements from eight property owners in the Hemet/Winchester area in Riverside County. The petition seeks to be relieved from the filing of late claims for personal injury and personal property damage arising from the Winchester fire of October 26, 1993. these claims were rejected as not filed within the six-month Notice of Claim statute and the issue before the court will be whether Petitioners can demonstrate that the failure was due to inadvertence, mistake, surprise or excusable neglect. Claims by the same claimants for damage to their homes and real property were timely and were denied by the District on their merits because, although the fire started on District property, it was not due to District negligence but rather the result of Southern California Edison power lines arcing in high winds. The General Counsel's office will take all steps to oppose the petition for relief from the claim requirement and to represent the District in the anticipated Superior Court case which we understand has been filed by these claimants against Southern California Edison and the District, but which has not yet been served on the District.

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