

APPROVED  
By the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AUG 22 1995

*Robert E. Duff*  
EXECUTIVE SECRETARY

7-12

July 28, 1995

To: Board of Directors (Legal and Claims--Action)  
(Water Planning and Resources--Information)  
From: General Counsel  
Subject: Litigation to Invalidate SWRCB Water Rights Order No. 95-6, Which Amended D-1485 for Consistency with the May 1995 Bay/Delta Plan; County of San Joaquin et al. v. SWRCB

RECOMMENDATION:

It is recommended that the General Counsel be authorized to intervene in County of San Joaquin et al. v. SWRCB and to take any and all actions related thereto to protect Metropolitan's interests in its water supplies from the Bay/Delta system.

*N. Gregory Taylor*  
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General Counsel

**EXECUTIVE SUMMARY:**

A number of water supply entities located in or near the South Delta have filed an action in the Sacramento Superior Court to invalidate the State Water Resources Control Board's (SWRCB) Water Rights Order No. 95-6 (WR 95-6), which made slight amendments to D-1485 to make that decision consistent with SWRCB's recently adopted Bay/Delta Plan. In this action, entitled County of San Joaquin et al. v. SWRCB, plaintiffs allege that WR 95-6 was prepared without adequate CEQA compliance and that it violates their asserted "area of origin" rights. This action could result in the State Water Project being subject to inconsistent regulatory requirements, with a negative impact on water supply. Perhaps more importantly, it also could result in judicial determinations regarding the scope and meaning of the various area of origin statutes. For these reasons, Metropolitan should seek to intervene to protect its interests in its State Water Project (SWP) water supply. (The SWRCB's Bay/Delta Plan itself is the subject of separate litigation, entitled San Joaquin Tributaries Assn. et al. v. SWRCB; your Board authorized the General Counsel to intervene in that action at its July 1995 meeting.)

**DETAILED REPORT:**

An action entitled County of San Joaquin et al. v. SWRCB has been filed in the Sacramento Superior Court to invalidate the SWRCB's June 8, 1995, WR 95-6. Plaintiffs in the action include the County of San Joaquin, Stockton East Water District, Central San Joaquin Water Conservation District, Central Delta Water Agency, South Delta Water Agency and others. The action seeks an order vacating WR 95-6 and declaratory relief establishing the rights and obligations of the plaintiffs under the "area of origin statutes."

As you will recall, in adopting its new Bay/Delta Plan in May 1995, SWRCB established more restrictive export limitations in most months than exist in D-1485, the SWRCB decision which authorizes the projects to export water from the Delta. In addition, the new Bay/Delta Plan includes less restrictive export limitations during some periods in the summer. The State Water Project (SWP) and Central Valley Project (CVP) have agreed to meet the new standards, through compliance with Endangered Species Act biological opinions, pending the outcome of SWRCB's imminent water rights proceeding which will, in part, result in the modification of D-1485. However, operating to meet the new standards of the Bay/Delta Plan instead of the inconsistent D-1485 standards could cause technical violations of D-1485, which still applies to project operations

To remedy this problem, the Department of Water Resources and Bureau of Reclamation petitioned SWRCB to modify D-1485 only to the extent necessary to make it consistent with the new Bay/Delta Plan requirements, and to allow the two projects to share points of diversion to enhance flexibility in meeting the Plan requirements. On June 8, 1995, SWRCB adopted WR 95-6 to eliminate the inconsistencies between the new Bay/Delta Plan and D-1485.

Plaintiffs in County of San Joaquin et al. v. SWRCB are entities in or near the South Delta who either (1) have a contract with the Bureau of Reclamation for water from New Melones Reservoir or (2) have direct riparian or appropriative rights to water from the Delta. They contend that because of WR 95-6, (1) water from New Melones Reservoir will be used for fish and wildlife protection, leaving less water available for plaintiffs; (2) the SWP and CVP will be able to export water which should be available to plaintiffs because of asserted "area of origin rights;" and (3) export of water by the SWP and CVP will reduce water quality and water levels in the Delta streams from which plaintiffs divert. Plaintiffs also contend that SWRCB has not complied with CEQA; In adopting WR 95-6, SWRCB relied on the environmental report prepared for adoption of the related Bay/Delta Plan, instead of preparing a separate Environmental Impact Report for WR 95-6. (The Bay/Delta Plan itself is the subject of separate litigation, entitled San Joaquin Tributaries Assn. et al. v. SWRCB, brought by a different set of plaintiffs. Your Board authorized the General Counsel to intervene in that litigation at its July meeting.)

If plaintiffs are successful in overturning WR 95-6, the SWP and CVP will be subject to inconsistent regulatory requirements, increasing uncertainty in project operations. Perhaps more significantly, plaintiffs raise important water rights issues—specifically the scope and meaning of the area of origin statutes and how responsibilities for contributing towards Bay/Delta environmental may be allocated. Consequently, this action could have an impact on the water rights of, and water supplies available to, the SWP.

For these reasons, it is recommended that Metropolitan seek to intervene in County of San Joaquin et al. v. SWRCB to protect its interests in the reliability of water supplies available from the Bay/Delta system, either in conjunction with the State Water Contractors and/or other urban and agricultural water supply agencies who share Metropolitan's views on the issues raised, or individually.