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The Metropolitan Water District
of Southern California
at its meeting held

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. Dwyer
EXECUTIVE SECRETARY

August 30, 1995

To: Board of Directors (Legal and Claims Committee--Information)

From: General Counsel

Subject: Legal Department Report for August 1995

RECOMMENDATION:

For information only.

N. Gregory Taylor
N. Gregory Taylor
General Counsel

(judbro\monaug.doc)

EXECUTIVE SUMMARY:

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

DETAILED REPORT:I. LitigationA. Proceedings in Which Metropolitan is a Party1. San Joaquin Tributary Assn. v. SWRCB

The SWRCB is still assembling the administrative record for this litigation attacking its May 1995 Bay/Delta Plan. SWRCB's response to plaintiffs' complaint will be due within 30 days of the submission of the record to the court. General Counsel and General Manager staff are continuing to discuss intervention in the case by stipulation as part of the overall discussions with plaintiffs and others on resolution of San Joaquin River issues. Pleadings to support a motion to intervene have also been drafted in the event intervention by stipulation is not obtained. Intervention will most likely be by Metropolitan in conjunction with the State Water Contractors.

B. Proceedings of Interest to Metropolitan

None to report.

II. Resource Matters1. Bay/Delta Hearings

The SWRCB held workshops on August 29 and 30 with respect to a number of issues regarding implementation of the flow, export and other operational requirements contained in SWRCB's Bay/Delta Plan. General Counsel staff, along with General Manager staff, participated in drafting several joint comment documents, including: 1) State Water Contractor comments describing that organization's position on several implementation issues and urging SWRCB to support ongoing discussions with upstream groups with regard to a negotiated solution to water rights implementation by holding technical/informational workshops before commencing adversarial water rights hearings; 2) comments on behalf of the "Joint California Water Users," made up of most of the entities represented in the CUWA/Ag process, also urging SWRCB support of the discussions; and 3) a short statement on behalf of the CUWA/Ag group and non-project water users on the Sacramento and San Joaquin Rivers on the status of the discussions.

2. County of San Joaquin, et al v. SWRCB

The SWRCB anticipates that it will have the administrative record for this action prepared by approximately October 9, 1995. This action challenges a SWRCB Plan. Pursuant to your Board's authorization, Metropolitan, in conjunction with the State Water Contractors, has obtained a stipulation to intervene in this matter in support of SWRCB; the stipulation, which is still being reduced to writing, will require responsive pleadings by Metropolitan/SWC 30 days after the record is filed with the court. SWRCB's response is due at the same time.

3. Golden Gate Audubon Society v. SWRCB

The Superior Court in Sacramento entered its order dismissing this action, without prejudice to plaintiffs' motion for attorneys' fees, on July 28, 1995. The order is in response to a motion to dismiss filed

the California Attorney General on behalf of SWRCB, supported by the State Water Contractors. The order of dismissal terminates this action which sought to invalidate SWRCB's adoption of a 1991 Water Quality Control Plan for the Bay/Delta, except for the issue of potential attorneys' fees against SWRCB. The 1991 Plan which was the subject of this action has been replaced by the new plan adopted by SWRCB in May of this year.

4. Colorado River Matters

Colorado River threatened and Endangered Species

Staff is assisting General Manager staff and the staff of agencies in California, Arizona and Nevada to prepare a "Sufficient Progress Agreement" related to the development of a Lower Colorado River Species Conservation Program. For the past two years, the Lower Basin states have been developing a program which would result in a comprehensive plan for management and protection of threatened, endangered and selected candidate species, while still accommodating current water diversions and power production and optimizing opportunities for future development. Earlier this year, the states and Federal government signed an MOU for Development of Lower Colorado River Species Conservation Program. It was agreed that, in the near term, adequate progress toward development of the program would satisfy the obligations of the states and Federal government with respect to Endangered Species Act consultation requirements regarding operation of Colorado River water and power facilities. The draft sufficient Progress Agreement would, among other things, establish the criteria used to determine whether sufficient progress was being made toward the development of the program.

III. Claims

None to report.

IV. Miscellaneous

1. Proposed Central Valley Improvement Act Revisions

A member of staff continues to work closely with the General Manager's staff and the staff of other urban agencies to develop a joint position on the proposed amendments to the CVP Improvement Act.