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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. Duff
EXECUTIVE SECRETARY

November 29, 1995

To: Board of Directors (Legal and Claims Committee--Information)
From: General Counsel *M. Gregory Taylor*
Subject: Legal Department Report for November, 1995

RECOMMENDATION(S)

For Information Only.

EXECUTIVE SUMMARY

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

DETAILED REPORT

I. Recent Developments of Interest to Metropolitan

Nothing to report.

II. Litigation

A. Proceedings in Which Metropolitan is a Party

San Joaquin Tributaries Assn. v. SWRCB

On November 17, 1995, the Sacramento Superior Court granted the motion of Metropolitan, Santa Clara Valley Water District; Kern County Water Agency, Tulare Lake Basin Water Storage District and the State Water Contractors to intervene in this litigation. Intervenors are now full parties and will support the State Water Resources Control Board in this action to invalidate SWRCB's May 1995 Bay/Delta Plan. Trial is currently scheduled for May 31, 1996.

County of San Joaquin et al. v. SWRCB

A complaint in intervention on behalf of Metropolitan and other State Water Contractors has been filed in this action. The SWC intervened to support SWRCB in this action seeking to invalidate SWRCB's Water Rights Order 95-6, which amended D-1485 to make it consistent with the May 1995 Bay/Delta Plan.

On November 8, 1995, the court granted SWRCB's motion prohibiting plaintiffs from taking the depositions of several SWRCB staff members. Plaintiffs argued that the depositions were necessary to elicit evidence that WR 95-6 was an invalid "back-room deal." The court found that plaintiffs raised nothing more than speculation, which was not enough to ignore the usual rule that the motives underlying administrative decisions may not be the subject of discovery.

MWD v. Rodine

Complaint filed, service being effected on Rodine at Oregon address. Need to watch the process and reaction of Rodine. Possibility that nuisance of having to hire lawyer and return to California will bring Rodine to the bargaining table to discuss the quitclaim the District wants. Also having Attorney John Harris watch time carefully for potential default if no answer filed timely, thus making it more costly for him to respond and request default judgment be set aside.

III. Resource Matters**Bay/Delta Hearings**

The United States Environmental Protection Agency (EPA) has notified SWRCB by letter that EPA is approving SWRCB's May 1995 Bay/Delta Plan. Under the Federal Clean Water Act, state-adopted water quality control plans are required to be submitted to EPA for approval. However, EPA stopped short of committing to withdraw its own Bay/Delta standards which it had adopted in December, 1993. EPA suggested instead that it may stay the federal standards pending resolution of the current litigation regarding the SWRCB Plan (San Joaquin Tributaries Assn. v. SWRCB). The letter also stated that EPA intended to discuss this issue at future CALFED meetings.

SWRCB held another workshop on November 15, 1995 to discuss/scope issues that will be the subject of its eventual water rights hearings to implement the Bay/Delta Plan. The November 15 hearing focused on the appropriateness of DWR's South Delta Barrier Program. DWR proposes to install tidal gates where the San Joaquin and Old Rivers meet, in order to keep salmon in the mainstream of the San Joaquin River, rather than swimming up Old River where they experience higher mortality. DWR also proposes three other structures in the interior Delta to remedy water quality and water level problems experienced by some South Delta farmers. The CUWA/Ag group joined with the San Joaquin Tributaries Association in a statement supporting installation of the barriers. Metropolitan and other CUWA/Ag staff also joined the Tributaries

Association and a group of Sacramento River diverters to report progress in negotiations intended to reach a water rights settlement that could avoid adversarial administrative and judicial water rights proceedings.

Monterey Amendment

A member of the staff completed extensive participation in the drafting of the amendment to the State Water Contract to implement the Monterey Amendment which was approved for execution by your board at its November meeting. This participation included work on the Oversight Committee responsible for development of the environmental impact report as well as various technical committees dedicated towards the implementation of the amendment and its accompanying White Paper. Work continues on completing the land transaction documents for the accompanying transfer of the Kern Water Bank from the State to the Kern County Water Agency.

Colorado River Threatened and Endangered Species

General Counsel and General Manager staff have worked with representatives of other California agencies, Arizona, Nevada and state and federal fish and wildlife regulators to develop a "Sufficient Progress Agreement" (SPA) and an "Intergovernmental Agreement" regarding the proposed Lower Colorado River Species Conservation Program. The conservation program is intended to provide protection to a variety of listed species, while accommodating current and future water and power operations on the Colorado River. The SPA is intended to establish criteria used to determine whether sufficient progress is being made toward development of the conservation program. The Intergovernmental Agreement will establish a cost allocation formula among the three states and a mechanism for collecting and disbursing funds used to develop the conservation program.

IV. Claims

Nothing to report.

V. Financing

Nothing to report.

VI. Legislative Matters

Nothing to report.

VII. Other Matters**MWD Headquarters**

On November 15, 1995 the Los Angeles Cultural Heritage Commission met to consider the demolition permit regarding a portion of a wall and the existing parking structure and ramp at Union Station which must be demolished to build the new building as required by the design. The Commission, consisting of 4 sitting members, did not object to the permit issuance. The permit for demolition and for construction can now proceed. The historic conservation groups did not make a significant presentation and it is extremely unlikely that there will be any appeal or litigation in this regard. All significant consultant contracts have been completed.

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