

FILED  
by the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held

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9-2



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Laura E. Duff*  
EXECUTIVE SECRETARY

December 29, 1995

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

**RECOMMENDATION(S)**

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For Information Only.

**EXECUTIVE SUMMARY**

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

**DETAILED REPORT**

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**I. Recent Developments of Interest to Metropolitan**  
**Colorado River Threatened and Endangered Species**

On December 11, 1995, the Center for Biological Diversity served its 60 day notice of intent to sue the United States Department of the Interior and the states of Arizona, California and Nevada with respect to the development of a comprehensive management plan for threatened and endangered species in the Lower Colorado River Basin (Management Plan). As previously reported, the three states and the Department of Interior (including the Fish and Wildlife Service and Bureau of Reclamation) are in the process of developing a proactive Management Plan intended to provide protection to a variety of listed species, while accommodating current and future water and power operations on the Colorado River. It is hoped that the Management Plan will eventually serve as a habitat conservation plan, providing the states and local parties protection from the take prohibitions of the Endangered Species Act (ESA) and a programmatic section 7 consultation for federal Colorado River water and power operations. The 60 day notice, which is required prior to filing an action against the United States under the ESA, asserts that the United States' participation violates its duty to conserve listed

species, improperly predetermines the outcome of section 7 consultations and will result in the destruction of critical habitat of listed species.

## **II. Litigation**

### **A. Proceedings in Which Metropolitan is a Party**

#### **County of San Joaquin et al. v. SWRCB**

Two motions of interest have been filed in this litigation. First, the United States (specifically, the U.S. Bureau of Reclamation) has asked the court to dismiss it from the case because it has not waived its sovereign immunity with respect to this type of action. In this litigation, plaintiffs sued the State Water Resources Control Board to invalidate an interim order which amended the water rights permits of the Bureau and the Department of Water Resources in certain respects to make them consistent with SWRCB's May 1995 Water Quality Control Plan for the Bay-Delta. The Bureau and DWR were not initially named as parties; when plaintiffs attempted to name the Bureau, this motion followed.

The second motion is on behalf of the SWRCB, seeking to dismiss the entire action on the basis that an "indispensable party"--the United States--has not been joined to the action. (This motion depends on the court's resolution of the United States' motion for dismissal, and is scheduled to be heard after that motion.) California Code of Civil Procedure section 389 requires the dismissal of any action in which an indispensable party is not joined. SWRCB asserts that the United States is an indispensable party to this action dealing with water rights permits of the United States and DWR, and that the action therefore must be dismissed if the United States is successful in its sovereign immunity motion. The State Water Contractors, who have intervened on the side of SWRCB, will file a motion joining SWRCB's motion.

## **III. Resource Matters**

### **Monterey Amendment**

The Monterey Amendment to the State Water Contract was executed by the General Manager, and approved as to form on behalf of the General Counsel on December 11, 1995. It, and the Monterey Amendments to various of the other state water contracts, were executed by the Director of the State Department of Water Resources on December 13, 1995. At this time, the Director and Kern County Water Agency representatives also executed various documents relating to the transfer of the Kern Fan Element lands to the Kern County Water Agency. The Monterey Amendment will become effective when the transfer of the Element lands is completed. It is anticipated this will occur early in 1996. At the time the transfer becomes effective it is anticipated that the lands will be immediately transferred to the Kern Water Bank Authority which is a joint powers agency established by certain of the Kern County Water Agency interests that collectively reduced their share of the Agency's entitlements by 45,000 acre-feet in exchange for the Kern Fan Element lands.

A member of the legal staff was extensively involved in the drafting of the Monterey Amendment and in a review of the Kern Fan Element land transaction documents.

#### **IV. Claims**

Nothing to report.

#### **V. Financing**

Metropolitan legal staff participated in preparation of a preliminary official statement and financing documents for a refunding of outstanding water revenue bonds. The refunding bonds are scheduled to be sold in early 1996, provided that market conditions permit Metropolitan to reach its target savings parameters.

#### **VI. Legislative Matters**

Nothing to report.

#### **VII. Other Matters**

##### **MWD Headquarters**

On December 14, 1995, the Los Angeles City Planning Commission unanimously approved the Conditional Use Permit as recommended by the Hearing Officer. No public opposition at all was raised at the Planning Commission meeting. On December 8, 1995, the Zoning Administrator approved the parking variance requested. No appeals or litigation are anticipated in this regard. Architectural plan check submittal was printed for submittal to Los Angeles City Building Department on December 15. January 2, 1996 is the scheduled date for Union State Partners to formally receive the demolition permit.