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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*David Chen*  
for EXECUTIVE SECRETARY

9-2

February 29, 1996

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

From: *J. General Counsel* *James L. Luchini*

Subject: Legal Department Report for February 1996

## RECOMMENDATION(S)

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For information only.

## EXECUTIVE SUMMARY

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This report discusses significant matters which the Legal Department was concerned with during the month of February.

## DETAILED REPORT

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### I. Recent Developments of Interest to Metropolitan

#### Colorado River Threatened and Endangered Species

On February 6, 1996, the Defenders of Wildlife served a 60-day notice of intent to sue the United States Department of the Interior with respect to the development of a comprehensive management plan for threatened and endangered species in the Lower Colorado River Basin (Management Plan). The Management Plan is an effort on behalf of the three Lower Basin states and the Department of the Interior to develop a proactive Management Plan to provide protection to a variety of listed species, while accommodating current and future water and power operations on the Colorado River. The notice 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 habitat critical to listed species.

As reported earlier, a similar notice was submitted by the Southwest Center for Biological Diversity in December of 1995. As of this report, the Center has not filed litigation.

## II. Litigation to Which Metropolitan is a Party

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

The Sacramento County Superior Court has dismissed this action because of the failure to join an indispensable party (the United States Bureau of Reclamation). In this case, plaintiffs sued the SWRCB to invalidate an interim order (WR 95-6) which amended the water rights permits of the Bureau of Reclamation (Bureau) and the Department of Water Resources (DWR) 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, the Bureau successfully convinced the court that it could not be named as a party because it had not waived its sovereign immunity with respect to this type of action. SWRCB then moved to dismiss the entire action because of the failure to join the Bureau as an indispensable party under Code of Civil Procedure Section 389. The court agreed that the Bureau was an indispensable party and that, since the Bureau could not be named, Section 389 requires that the action must be dismissed in its entirety.

### **San Joaquin Tributaries Association v. SWRCB**

The parties to this litigation--attacking the SWRCB's May 1995 Water Quality Control Plan--have stipulated to delay the trial date from May 31, 1996 to September 27, 1996. The agreement to delay the trial date is significant because it indicates that the parties are optimistic that the current negotiations on sharing the responsibility for meeting San Joaquin River flows will be successful. A member of the Legal Department has been assisting in those negotiations.

### **Azusa Landfill (San Gabriel Basin Watermaster et al. v. BFI)**

Pursuant to authority granted by the Board last month, Metropolitan along with other water agencies filed a writ of mandamus in Los Angeles Superior Court on February 28, 1996, joining the writ of Watermaster in the above matter. The writs seek reversal of a RWQCB order granting BFI a permit to continue to operate the Azusa Landfill.

**Planning and Conservation League et al. v. Department of Water Resources,  
Central Coast Water Authority**

This litigation relates to the Monterey Agreement. Plumas County Flood Control and Water Conservation District and Citizens Planning Association of Santa Barbara County, Inc. have been added as plaintiffs. Two additional causes of action have been added to the pre-existing causes of action relating to compliance with the California Environmental Quality Act. A cause of action asserting that the Department wrongfully executed water supply contract amendments and the agreement to transfer the Kern Water Bank to the Kern County Water Agency has been added. Also, a cause of action asserting that the transfer violates a provision of the Water Code that forbids sale of certain Department assets such as reservoirs and power facilities.

**III. Claims**

Nothing to report.

**IV. Financing**

On February 16, 1996, Metropolitan executed a bond purchase agreement with Smith Barney Inc. for the purchase of Metropolitan's \$258,875,000 Water Revenue Refunding Bonds, 1996 Series B. These bonds refund outstanding bonds issued in 1978 and 1991 to produce debt service savings. Legal Department attorneys have participated in negotiations with the underwriters, preparation of the Official Statement describing the bonds, and preparation of documents required for the closing on February 28. Another series of refunding bonds, the 1996 Series A Bonds, were authorized and sold in 1994 under a forward delivery commitment. The sale of these bonds is scheduled to close at the end of March.

**Rate Refinement**

Attorneys from the Legal Department have attended the rate refinement negotiations to advise the negotiators on legal issues arising from the various alternatives considered by the group. At the negotiation session on February 20, we reported on our research on permissible revenue sources and collection mechanisms, as well as statutory and constitutional restrictions on other alternatives.

**V. Legislative Matters****ACR 59 (Thompson - Fallbrook); SCR 51 (Haynes - Murietta)**

Assembly Concurrent Resolution No. 59 introduced by Assemblyman Bruce Thompson and Senate Concurrent Resolution No. 51 introduced by Senator Ray Haynes are identical in form and both recommend that the Metropolitan Water District permanently name the Eastside Reservoir "Lake Domenigoni". Specifically, the Resolutions call for the reservoir to be named "Lake Domenigoni", the east side recreation area to be named the "Searl Ranch Recreation Area", the west side recreation area to be named the "Garboni Farms Recreation Area", and that any terrain names recognize the Native American heritage of the area. Resolutions are not binding in any way and only constitute a recommendation by the Legislature.

**AB 2332 (Thompson - Fallbrook)**

Assembly Bill 2332 provides that construction on the Eastside Reservoir Project will be halted until groundwater mitigation issues are resolved to the satisfaction of the downstream property owners. The Bill would force Metropolitan to establish and maintain very high groundwater levels for downstream property owners and, if the levels are not maintained, require Metropolitan to provide potable water through surface connections. The Bill would also grant jurisdiction to the State Water Resources Control Board over Metropolitan's CEQA groundwater mitigation plan and over all groundwater resource issues; areas where the SWRCB has no authority. Metropolitan would be required to reimburse the SWRCB for all costs. A Board Letter has been sent to the Legislation and Water Planning Committees recommending adoption of an oppose position.

**VI. Other Matters****Headquarters**

- Union Station Partners has commenced relocation of the Amtrak facility, now located on Metropolitan's building pad. This relocation is anticipated to cost approximately \$4.3 million and will be completed in approximately six weeks. It is being absorbed by Union Station Partners under the terms of the Development Agreement.