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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

September 30, 1996

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

From: General Counsel

N. Gregory Taylor

Subject: Legal Department Report for September 1996

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

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

DETAILED REPORT

I. Recent Developments of Interest to Metropolitan

Nothing to report.

II. Litigation to Which Metropolitan is a Party

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

Petitioners (Planning and Conservation League; Plumas County Flood Control and Water Conservation District and Citizens Planning Association of Santa Barbara County) have filed their appeal from the trial court's decision denying their petition for writ of mandate to invalidate the Monterey amendments to the state water contracts because of failure to

adequately comply with the California Environmental Quality Act. Petitioners are also seeking a writ of supersedeas from the Court of Appeal to stay further implementation of the Monterey Amendment. (Implementation, including transfer of the Kern Fan Element to the Kern County Water Agency, has already taken place.)

The cause of action seeking to invalidate the Monterey Amendment, because the transfer of the Kern Fan Element is alleged to violate Water Code provisions, remains before the trial court as does the cross-complaint filed by San Bernardino Valley Municipal Water District's cross-complaint seeking to invalidate the Monterey Amendment because it purportedly violates San Bernardino's existing state water contract. Settlement discussions have taken place involving the Department of Water Resources and San Bernardino Valley. The City of Redlands is now seeking to intervene in the lawsuit because of concerns that the settlement may involve pumping of groundwater by San Bernardino Valley into the East Branch of the California Aqueduct. (San Bernardino historically has been interested in enhancing its ability to sell water outside its service area.) A hearing on the City of Redlands' attempt to intervene is scheduled for Sacramento Superior Court on October 15, 1996.

San Joaquin Tributaries Assn. v. SWRCB

The San Joaquin Tributaries Association and other San Joaquin River interests (Plaintiffs) and the State Water Resources Control Board (SWRCB) have agreed to a dismissal of this litigation. Plaintiffs filed the action in 1995 challenging SWRCB's May 1995 Water Quality Control Plan, raising the appropriateness of a flow standard at Vernalis on the San Joaquin River and asserting water rights issues. Metropolitan and a number of other State Water Contractors intervened to protect the Plan (even though we agree that the data underlying the particular standard at issue is sketchy) and to rebut plaintiffs' water rights assertions; San Francisco intervened on the side of plaintiffs. Subsequently, as reported in the General Counsel's June 28, 1996 monthly report to the Board, all of the parties executed principals for an agreement regarding the obligations of the San Joaquin River interests to provide flows towards meeting the Vernalis standard. As part of the agreement, the parties agreed to stay the litigation pending SWRCB approval of the agreement. The San Joaquin River interests have now agreed to completely dismiss the action and, in return, the SWRCB has promised to hold hearings to review the appropriateness of the current Vernalis standard. As an intervencor, Metropolitan's agreement to the dismissal must be obtained. Because dismissal of the action will remove a threat to the Plan as a whole and will hasten a review of the questionable Vernalis standard, the General Counsel agreed to the dismissal as being in the best interests of Metropolitan.

The Metropolitan Water District of Southern California v. Hyman/JWP West

Please see Board Letter 8-10 for a discussion of this item.

The Metropolitan Water District of Southern California v. Domenigoni

Metropolitan has appealed from the \$40.5 million judgment entered in this eminent domain action. The proceedings on this appeal are currently stayed pending a settlement conference with Associate Justice James D. Ward.

The defendants have withdrawn the original \$11.6 million deposits which Metropolitan made as a condition to taking possession of the property being condemned. As required by law, Metropolitan deposited an additional \$24.6 million after the judgment was entered to retain possession of the property. The defendants made a motion to withdraw the additional deposit, which Metropolitan opposed unless security for repayment was provided. On August 22 the trial court granted the motion to withdraw without requiring the posting of any security. Metropolitan filed an appeal of this order which creates an automatic stay under California law. On September 12 the defendants sought an ex parte order from the trial court to enforce the withdrawal, which was also granted by the trial court. At Metropolitan's request, an emergency stay of this order was issued by the Fourth District Court of Appeal on September 13. Metropolitan has followed the request for emergency stay with a petition for writ of supersedeas which would stay proceedings in the trial court relating to the withdrawal of the deposit until the appellate court has ruled on Metropolitan's appeal. A ruling on the writ petition is expected to be issued in the next several weeks. The emergency stay remains in effect until further order of the appellate court. The court of appeal has also ordered this second appeal to a settlement conference.

III. Resource Matters

Colorado River Threatened and Endangered Species

The United States Bureau of Reclamation (Reclamation) has issued its final Biological Assessment of the impacts of its operations on sensitive species along the Lower Colorado River. Under the "consultation" process of Section 7 of the Endangered Species Act, Reclamation has submitted the Assessment to the United States Fish and Wildlife Service (Service), which will review the Assessment to determine whether Reclamation's operations will jeopardize threatened or endangered species. It is anticipated that the Service will circulate a draft of its Biological Opinion for review by interested parties by the end of 1996, and issue a final draft during the first half of 1997. As you will recall, Metropolitan and many other water and power providers in the Lower Basin, the Service, Reclamation, Indian Tribes and environmental groups are attempting to develop a Multi-Species Conservation Program (MSCP) that could satisfy ESA requirements as well as operational and permitting needs with respect to Colorado River operations.

On August 23, 1996, the Defenders of Wildlife withdrew a 60-Day Notice to sue the Service and Reclamation regarding those agencies participation in the development of the MSCP. The 60-Day Notice alleged that the Service and Reclamation were abrogating their regulatory responsibilities by participation as partners in development of the MSCP. As the result of the negotiation of a Memorandum of Clarification which clarified the parties' understanding of the roles to be played by the Service and Reclamation, and the issuance of the final Biological Assessment referred to above, Defenders agreed that its notice was unnecessary and that it would be a full participant in the development of the MSCP. Defenders did reserve its rights with respect to the adequacy of the Biological Assessment and the ultimate products of the consultation and MSCP processes.

Proposed Listing of Coastal Steelhead

The National Marine Fisheries Service (NMFS) has noticed a proposal to list several populations of Pacific Coast Steelhead populations under the Federal Endangered Species Act. The notice includes a proposed endangered listing for Central Valley populations and a threatened listing for the Northern California populations. Steelhead are an anadromous form of rainbow trout which use the Delta and Central Valley and Northern Coastal streams as spawning routes or grounds. Listing of the Steelhead could have an impact on operations of the State Water Project and Central Valley Project and on steelhead hatchery operations. Metropolitan is working with other State Water Contractors, the Department of Water Resources, the Association of California Water Agencies and others to formulate a response to the listing proposal and to develop measures that could protect steelhead, while minimizing impacts on project operations, in the event the steelhead are listed. Particular attention is being given to currently existing or planned measures under the Bay/Delta Water Quality Control Plan, the Central Valley Project Improvement Act, the Category III program and other existing programs for other sensitive species in the watershed.

California Electric Industry Restructuring

In late August, Metropolitan filed comments with the Federal Energy Regulatory Agency on Pacific Gas and Electric Company's Market Power Study. Additionally, staff attended the FERC Technical Conference on the WEPEX filings on September 12-13, and, with the assistance of outside counsel, filed comments at FERC responding to issues raised at the technical conference, and to comments on the WEPEX proposals submitted by the California Public Utilities Commission. Staff is also participating in the ISO and PX Governance Definition Teams, which is the working group responsible for preparation of the implementing agreements and tariffs to be submitted to FERC in winter or spring of 1997.

IV. Claims

Nothing to report.

V. Financing

Legal staff assisted Bond Counsel and Disclosure Counsel in finalizing (i) the Offering Memorandum dated September 24, 1996, for Metropolitan's expanded commercial paper program and (ii) closing documents for the sale of commercial paper notes in the principal amount of \$70 million. Revisions to the Offering Memorandum included responses to issues raised by members of your Board. The closing of this sale is scheduled for October 3, 1996.

VI. Legislative Matters

Over 6319 bills, Constitutional amendments and resolutions were introduced by the California Legislature during 1995/96 session. Additionally, over 10,226 amendments to those bills were made. This includes the regular session of the Legislature and the four special sessions held concurrently during the session. All bills introduced and amended were screened by the General Counsel's office to determine whether an analysis was necessary. Fifteen hundred Forty-three (1543) bills and amendments were analyzed by the attorneys in conjunction with policy reviewers from the appropriate divisions. The staff is currently reviewing all chaptered bills to determine any impact on the District.

VII. Administrative Matters

Nothing to report.