



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

December 30, 1996

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

From: General Counsel

M. Gregory Taylor

Subject: Legal Department Report for December, 1996

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

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

DETAILED REPORT

I. Recent Developments of Interest to Metropolitan

Nothing to report.

II. Litigation to Which Metropolitan is a Party

MWD 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 scheduled for December 19, 1996. A report on the status of the appeal is discussed in detail in Board letter 8-10.

Metropolitan deposited an additional \$24.6 million after the judgment was entered to retain possession of the property. Defendants have sought to withdraw the additional deposit which Metropolitan opposed unless security for repayment was provided. On October 17, 1996, the Court of Appeal denied Metropolitan's petition for supersedeas and dissolved the temporary stay. On October 21, 1996 Metropolitan filed a request for immediate stay and petition for review with the California Supreme Court. The Supreme Court ordered the withdrawal stayed while it reviews the petition for review. On December 11, 1996, the Supreme Court denied Metropolitan's petition for review. Three justices voted in favor of granting review--one vote short of the number required. The defendants have withdrawn the deposit and Metropolitan's counsel will pursue all available legal protections for reimbursement of the funds in the event of a successful appeal.

Winchester Fire Litigation (Ross, et al. v. So. Cal. Edison Co.)

The District remains a party in five of the eight actions consolidated in Riverside Superior Court arising out of the Winchester Fire of October 26-27, 1993. On December 12, 1996, the Court dismissed the District as a party as to three of the actions upon the District's Motion for Summary Judgment for failure to comply in a timely fashion with appropriate government tort claim presentation statutes. The Winchester Fire, which burned approximately 25,000 acres and some 30 structures, originated on District property in the Domenigoni Valley as a result of trees in power lines owned by Southern California Edison Company. Southern California Edison Company disputes that version of the cause and origin of the fire, and has cross-complained against the District for implied indemnity based upon negligence. This matter is set for trial on March 17, 1997.

III. Resource Matters

El Dorado Irrigation District Water Right Permit

Earlier this summer the State Water Resources Control Board (SWRCB) granted an appropriative water right permit to the El Dorado Irrigation District (EDID). Since EDID has an old priority date and is an area of origin water user, it was given a diversion right senior to the SWP and CVP. This was generally consistent with California law. Contrary to its standard practice, however, SWRCB did not include its standard permit term known as "Term 91." Term 91 is a condition which SWRCB determined in its Water Rights Decision 1594 "shall be included in new permits for diversion." It is one of a number of conditions in 23 Cal.Admin. Code Sec. 780 which SWRCB normally includes in all permits. Briefly, Term 91 provides that senior users diverting directly from the Sacramento or San Joaquin Rivers must cease those diversions when the projects are making releases of previously stored water to meet Delta standards or project uses. This term is necessary to prevent direct diverters from taking stored water belonging to the projects, which would not be there absent project operation.

SWRCB gave no notice that it was not intending to include Term 91 in the EDID permit. Consequently, neither the Department of Water Resources (DWR) nor the State Water Contractors (SWC) had the opportunity to oppose that omission. Subsequently, however, both DWR and the SWC filed petitions for reconsideration of the decision by SWRCB. In late November, 1996 SWRCB adopted an order directing reconsideration of the EDID permit decision. EDID was given until December 6, 1996 to submit a response to the petitions. The matter is now under submission to SWRCB.

Federal Energy Regulatory Commission

On November 26, 1996, the Federal Energy Regulatory Commission issued its order conditionally approving the applications of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company to establish a Power Exchange (PX) and an Independent System Operator (ISO). The Commission approved on a preliminary basis the Companies' proposed overall framework for conveying operational control of certain facilities to an Independent System Operator as well as ultimately granting authority to sell electric energy at market-based rates using a Power Exchange. Metropolitan, Los Angeles, Burbank, Pasadena and State Water Contractors, Inc. were among entities which filed motions to intervene. All of the motions to intervene were granted.

The next step in the process is a required final filing by March 31, 1997, which will contain the proposed tariffs, rules, protocols, and contracts for operation of the ISO and PX. The Commission order directed the Companies and in certain instances, the ISO, to address particular issues, including (1) how the ISO will "handle" existing contracts, such as the ones to which the Department of Water Resources and Metropolitan are a party; (2) whether the usage charge intended to mitigate transmission congestion violates the Commission's transmission pricing principles, and (3) how transmission congestion contracts will be established and administered. The Commission supported those aspects of AB 1890 which the Commission found did not encroach upon its exclusive jurisdiction under the Federal Power Act. However, it found that AB 1890's creation of a permanent role for the Oversight Board was pre-empted, and limited the Oversight Board to merely serving a start-up function. Additionally, the Commission found AB 1890's California residency requirement for ISO and PX Governing Board membership was discriminatory. The Commission also indicated it would separately address the Companies' market power in a separate order to be issued before the end of the year. We will report to your Board on that order when it is available.

Metropolitan staff and the Duncan, Weinberg firm continue to be extensively involved in working with industry stakeholders, and in particular municipal utilities, and the Companies in preparing for the next filing with the Commission. Metropolitan staff continues to monitor related proceedings before the California Public Utilities Commission.

IV. Claims

Nothing to report.

V. Financing**Sale of Water Revenue Bonds**

On December 18, 1996, Metropolitan closed the sale of its \$377,500,000 Water Revenue Bonds, 1996 Series C. The 1996 Series C Bonds were sold pursuant to a purchase contract with Paine Webber Incorporated, as representatives of the underwriting group, on November 27, 1996. Proceeds from the sale will be expended to fund Metropolitan's capital improvement program. Legal Department representatives worked with Co-Bond Counsel and Disclosure Counsel to negotiate and prepare the bond documents and disclosure documents.

Review of MWD Deferred Compensation and Savings Plans

In November 1996 the General Counsel retained Boutwell, Behrendt & Ennor, a WBE law firm headquartered in Irvine, to review Metropolitan's employee deferred compensation and savings plans for continuing compliance with tax laws and regulations in general and recent tax law changes in particular. The plans have been reviewed and necessary changes have been identified, and as a first step to implementing the required changes the documents to place the 457 plan assets in trust are being prepared.

VI. Legislative Matters

The Legislative Coordinators' Annual Workshop, given by Sacramento, L.A. and D.C. staff, was held for over 60 MWD employees involved in legislative analysis. They were given training on Metropolitan's legislative review process, instructed on federal and state requirements for reporting lobbying-related time and expenses, and given an update on current issues affecting the District.

Members of the California Legislature convened briefly during the first week in December to take their oaths of office and elect their leadership. The members have already begun introducing bills for the 1997/98 Legislative session.

VII. Administrative Matters

The close of the year brought yet another successful event to the Department: rollout of CompInfo's Corporate LawPack to several users within Legal. 27 cases, most of which are a result of the Inland Feeder eminent domain litigation, are currently being managed by this software program. Many of the routine and manual tasks associated with tracking, storing, retrieving and managing information pertaining to the department's assigned matters are

managed by LawPack as well. The assignment tracking module, for instance, facilitates and expedites the assignment process by automatically generating activities based on occurrences of specific events. This module will be rolled out to the remaining users next year, along with timekeeping and docket calendaring.

A policies and procedures manual, outlining various district policies and department operating procedures and guidelines, has been established for the Department. It will be updated on an ongoing basis.

The addition of task codes to the financial system has enabled the Department to generate a broader range of financial reports.

Also, the Department continues to use PC DOCS to facilitate and retrieve work product generated by the computer system. However, plans are underway to integrate DOCS with the district-wide document management solution after the first of the year.

In late November, the Department sponsored a seminar on the Brown Act, the Political Reform Act and the Public Records Act. The seminar was conducted by an outside consultant, Julie Dolan, who has provided similar programs for several cities and city attorney associations. The program was attended by Department attorneys and staff as well as by other Metropolitan employees who prepare Board agendas, keep records or take Board minutes.