



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

January 31, 1997

**To:** Board of Directors (Legal and Claims Committee--Information)  
**From:** General Counsel   
**Subject:** Legal Department Report for January, 1997

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## RECOMMENDATION(S)

For information only.

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## EXECUTIVE SUMMARY

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

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## DETAILED REPORT

### **I. Recent Developments of Interest to Metropolitan**

None to report.

### **II. Litigation to Which Metropolitan is a Party**

#### **Metropolitan Water District v. All Persons Interested**

Pursuant to Board authorization on January 14, 1997, Metropolitan filed an action to determine the validity of the wheeling policy and wheeling rates adopted by the Board on that same date. The action was filed under California Code of Civil Procedure Section 860, et seq., which can provide an expedited court determination of the rates' validity which is binding on the public generally, whether or not other persons participate in the litigation. At the same time, the

General Counsel, as directed by the Board, agreed with the San Diego County Water Authority not to move the litigation to trial for a 90-day period in order to give Metropolitan and the Water Authority time to resolve differences regarding the wheeling policy. Members of the Legal Department continue to participate in those discussions and in the Rate Refinement process.

#### **MWD v. Beitler & Associates, Inc.**

On December 23, 1996, the California Supreme Court denied Beitler & Associates' Petition for Review. Previously, the Court of Appeal had affirmed the trial court's granting of Summary Judgment in Metropolitan's favor. The Beitler firm was originally retained as Metropolitan's real estate broker for the WCT transaction and in negotiations for lease space at California Plaza. In 1993, Metropolitan sought to terminate the agreement with Beitler to perform work on the permanent headquarters project. As a result of Beitler's position that its services could not be terminated, Metropolitan filed a declaratory relief action seeking a judicial determination that the brokerage agreement was void as a matter of law. Beitler filed a Cross-Complaint seeking damages for causes of action which included breach of contract, defamation, interference with prospective business advantage, and unfair business practices. Metropolitan was successful in obtaining summary judgment and a dismissal of the Cross-Complaint in 1994.

#### **MWD v. Domenigoni**

Metropolitan has appealed from the \$40.5 million judgment in this eminent domain action. The proceedings on this appeal had been stayed pending settlement conferences with Associate Justice James D. Ward. A settlement conference was held on January 15 to convey the settlement proposal approved by the Board of Directors at its January 14 meeting. A further settlement conference is scheduled for February 7. However, Francis Domenigoni passed away on January 23. The General Counsel has offered to delay further settlement meetings for a reasonable time to allow the family time to deal with this loss. A report on the settlement discussions will be made pursuant to Item 8-13 on the Board's agenda.

### **III. Resource Matters**

#### **Restructuring of the Electric Industry.**

On December 18, 1996, the Federal Energy Regulatory Commission issued its order on California investor-owned utility market power in the context of the proceedings to implement a restructured electric utility industry in California. For further information regarding this order, and other related FERC orders, please see Board letter No. 9-12.

**IV. Claims**

None to report.

**V. Financing**

Legal Department staff worked with Finance and Business Services Division staff on the procedures necessary to adopt water rates and charges for the coming fiscal year, and continued their support of Rate Refinement negotiations. Legal Department staff are participating on the Proposition 218 Subcommittee of ACWA's Legal Affairs Committee to analyze this initiative and comment on clarifying legislation expected to be introduced.

**VI. Legislative Matters**

Staff has begun reviewing bills for the new legislative session. January 24 was the last day for members of the California Legislature to submit bill requests to the Office of the Legislative Counsel. February 28 is the bill introduction deadline. Staff will also review any significant legislation introduced during the special session of the Legislature recently called by the Governor. The special session convened on January 13 to address the recovery efforts from the recent winter storms.

Committee members have been selected for the 105th Congress. The President's budget for fiscal year 1998 is scheduled to be released on February 6.

**VII. Administrative Matters**

None to report.