

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

February 19, 1997

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

From: General Counsel *[Signature]*

Subject: Litigation Concerning Local Regulation of Water Softeners

RECOMMENDATION:

For information only.

EXECUTIVE SUMMARY:

Oral argument was heard on February 10, 1997 before the Fourth Appellate District Court of Appeal in Water Quality Association v. City of Escondido, concerning an Escondido ordinance, based on a Model Ordinance of the San Diego County Water Authority, regulating the use of self-regenerating water softeners. The ordinance was passed because these water softeners discharge a substantial amount of salt into the city's wastewater system, and impair the city's efforts to reclaim the water for appropriate nonpotable purposes. The lower court invalidated the ordinance, finding that it was preempted by state law. In April 1996 the Second Appellate District Court of Appeal invalidated similar ordinances by the County of Santa Barbara and the City of Santa Maria on the basis of state preemption.

DETAILED REPORT:

On February 10, 1997, oral argument was heard before the Fourth Appellate District Court of Appeal in the case of Water Quality Association v. City of Escondido, concerning the validity of a City of Escondido ordinance which prohibited the future installation of self-regenerating water softeners within Escondido, and provided that existing self-regenerating water softeners be removed upon resale of residential property. The ordinance, which is based on a Model Ordinance of the San Diego County Water Authority ("SDCWA"), was enacted because these types of water softeners discharge a substantial amount of salt into the city's wastewater system and impair the city's ability to use reclaimed water for appropriate nonpotable purposes. The lawsuit was brought by the Water Quality Association, an international trade association representing self-regenerating

water softener makers, and Coastal Cities Water Treatment, Inc., a seller of self-regenerating water softeners.

The lower court invalidated the ordinance, finding that it was preempted by state law which allows residential consumers to use this type of water softener if the water softeners meet the water hardness and conservation measures specified in that law. Escondido and the SDCWA, an intervenor in the lawsuit, appealed this ruling and counsel for these parties participated in the oral argument before the Court of Appeal. Among other arguments, Escondido and SDCWA contend that the lower court's decision undermines the established legislative program for public agencies to take steps to reclaim water containing water to supplement existing surface and groundwater supplies.

Counsel for SDCWA has reported to the SDCWA Board of Directors that it was not possible to determine the probable result in the case from the Court's questions to them, but that there was no doubt that the Court was mindful of rulings against the ordinance by trial judges for this case and a similar case involving Santa Barbara County, and the April 1996 ruling of the Court of Appeal of the Second Appellate District which held that ordinances of the Santa Barbara County and the City of Santa Maria regulating water softeners were preempted by state law. (See: Water Quality Association v. County of Santa Barbara (1996) 44 Cal.App.4th 732, 52 Cal.Rptr. 2d 184; rehearing and review denied.) Metropolitan, in conjunction with the Las Virgenes Municipal Water District, contributed an amicus curiae brief in support of the SDCWA's efforts; however, the Court refused to permit the brief to be filed because it felt the issues were already adequately represented by the parties and other amicus curiae in the case. The Legal Department will continue to advise the Board of future developments in this matter.