



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

February 28, 1997

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

From: General Counsel

Subject: Legal Department Report for February, 1997

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

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

DETAILED REPORT

I. Recent Developments of Interest to Metropolitan

Hayden v. California Fish and Game Commission.

On February 21, 1997 Superior Court Judge William Cahill granted petitioners' motion for writ of mandate ordering the California Fish and Game Commission (Commission) to designate the Spring Run as a "candidate species" under the California Endangered Species Act (CESA). As a candidate species, the Spring Run is subject to the "take" prohibitions of the CESA, which could impact operations of the State Water Project. The State Water Contractors, who intervened in support of the Commission, are reviewing and discussing the decision with the Attorney General (the Commission's attorney in the litigation) to determine whether to appeal the decision.

II. Litigation to Which Metropolitan is a Party

Azusa Land & Reclamation Co. v. Main San Gabriel Valley Watermaster, Metropolitan Water District, et al.

In October 1996, the Los Angeles Superior Court issued an order closing down Azusa Landfill for failure to comply with CEQA on the issuance of its operating permit from the Regional Water Quality Control Board. Azusa Land & Reclamation Co. ("ALR"), which is owned by BFI, appealed the order and on February 18, 1997, the Court of Appeal issued its opinion. The Court of Appeal unanimously affirmed the judgment of the Superior Court in a strongly worded opinion that rejected every argument raised by BFI's attorneys. The opinion specifically cited the strong evidence in the record prepared by the team of experts hired by Metropolitan as proof of a need for CEQA review. This opinion should keep the Azusa Landfill closed until an Environmental Impact Report which shows that the Landfill can mitigate its impacts on groundwater is prepared. The Court certified the judgment for publication; BFI may appeal the ruling to the California Supreme Court.

Associated Builders & Contractors vs. MWD, et al.

This case was filed in October, 1996 by the Associated Builders and Contractors ("ABC") challenging the Project Labor Agreement on the Eastside Reservoir Project. Metropolitan prevailed at the Superior Court in November, 1996. On January 28, 1997 ABC filed its Notice of Appeal. The matter will be heard in approximately 4 - 6 months. A similar challenge to a Project Labor Agreement has been appealed in Northern California. It is likely that the Northern California matter (ABC vs San Francisco Airports Commission) will be heard a month or two in advance of the MWD matter. This will be a matter of first impression at the appellate level in California. By a separate Board Letter to be considered this month, the General Counsel is requesting authorization to file an amicus brief in the San Francisco case.

Terry Blake vs. MWD, et al.

On November 17, 1994, Metropolitan employee Terry Blake was in an auto accident in a Metropolitan car at approximately 2:00 a.m. He was not authorized to use the car, was not on Metropolitan business and did not report the accident until the occupants of the other car filed a claim and a Metropolitan investigation commenced. After November, 1994, Blake's conduct resulted in Metropolitan obtaining two permanent injunctions against Blake barring him from any contact with two Metropolitan employees and ultimately terminating his employment.

Blake alleged that his right to privacy was violated when a Metropolitan employee wrongfully obtained financial information regarding Blake from the MWD Credit Union, that he was denied his due process rights during his demotion and termination, and that wrongful conduct by Metropolitan employees caused him mental and emotional injury.

On October 1, 1996, Los Angeles Superior Court Judge Kurt J. Lewin granted Metropolitan's Motion for Summary Judgment. The motion was brought on the grounds that Blake had not exhausted his administrative remedies, had not preceded his personal injury causes of action with a proper claim and had no standing to bring an action under 28 U.S.C. 1983. The order of final judgment was entered on October 10, 1996, and the time for appeal has now expired.

John and Beatrice Grodahl vs. MWD, et al.

On January 17, 1993, the Grodahls' property, located at the Eastside Reservoir Project site, was flooded. Their property included a house and an airplane repair business, both of which sustained substantial damage from water and mud. The bulk of the Grodahls' \$250,000 claim consists of damage to airplane parts.

A small earthen dam, which had been used for watering cattle, was located on property above the Grodahls'. This dam failed during a storm due to "piping" which occurred around PVC pipe located near the top of the dam to permit run off. This caused the damage to the Grodahls' property. The Grodahls alleged Metropolitan's clearing of hillsides above the dam for the Eastside Reservoir Project decreased the ability of the hillsides to absorb rainfall and the resulting increased runoff caused the flooding of their property.

On January 29, 1997, a trial was held in this matter before Judge Charles Field. The trial was limited to the issues of inverse condemnation liability and the Robinsons' claim of constructive possession by Metropolitan. On February 19, 1997, Judge Field rendered a verdict in favor of Metropolitan finding that Metropolitan did not cause the failure.

Maria Magno vs. MWD, et al.

On March 22, 1995, a collision occurred between Magno's car and a Metropolitan van. Both drivers alleged the other made an unsafe lane change. Magno alleged personal injuries and property damage. Her medical specials total \$3,410. Metropolitan alleged property damage and workers' compensation expenses.

Two events of note have occurred in this matter. First, Metropolitan's cross-complaint for property damage and workers' compensation expenses settled, with Metropolitan receiving \$750 for its claim of approximately \$1,000. With the cross-complaints settled, we proceeded to arbitration on January 21, 1997. The arbitrator rendered an award in Metropolitan's favor.

MWD vs. Hansen, et al.

This eminent domain action was filed by Metropolitan to acquire approximately 108 acres of land for the Eastside Reservoir Project. Metropolitan's appraiser valued the land at \$340,000, and the owners' appraiser valued it at \$1,635,000. In November, 1996, Metropolitan made its settlement offer of \$865,000, and the owners submitted a settlement demand of \$1,235,000. On December 23, 1996, the owners served a revised settlement demand of \$1,000,000. This revised demand was considered and rejected by the Legal and Claims Committee at its January 13 meeting. Defendant Christian Hansen appeared before the Legal and Claims Committee on February 10 and made a settlement proposal of \$932,500. The Committee rejected this proposal as well. On February 20, Metropolitan was served with a notice that the defendants agreed to accept Metropolitan's final settlement offer of \$865,000.

III. Resource Matters**Washington D.C. Meetings Re No Surprises Litigation**

During the past month, the General Counsel, Gregory Taylor, attended meetings in Washington, D.C. with Kathleen McGintz, Chair of the President's Counsel for Environmental Quality and John Garamendi, Assistant Secretary of the Interior. The meetings concerned the pending No Surprises litigation and position of the federal government. Those attending represented California Resources Agency, Orange County Transportation Agency, City and County of San Diego and northwest timber interests, which have executed Habitat Conservation Plans.

Colorado River Matters

Assistant General Counsel Karen Tachiki, with Chief of Planning & Resources Debra Man and Special Counsel Jerry Muys met with John Leshy, Department of the Interior Solicitor and other Interior officials on Colorado River matters.

IV. Claims

None to report.

V. Financing

Metropolitan has commenced service of process in MWD vs. All Persons Interested in the Matter of the Validity of the Fourth Supplemental Resolution for Commercial Paper and Revolving Notes, the action to validate the recently-adopted wheeling rates. Pursuant to an order of the Superior Court specifying the manner in which service should be accomplished, the summons is being served by publication in the Los Angeles Times and San Diego Union-Tribune, by posting and (consistent with the agreement between Metropolitan and the San Diego

County Water Authority with respect to this litigation) by personal service on the Authority. Interested persons may obtain copies of the summons and complaint from the General Counsel.

VI. Legislative Matters

None to report.

VII. Administrative Matters

The Legal Department is in the process of upgrading two 486 XL 466s this fiscal year, at a cost of approximately \$1,500 projected to be paid by June 30, 1997. As was mentioned at the February Committee meeting, thirty-three computers must be replaced with Pentiums since they are not able to handle new district software. The cost of replacement of all computers is approximately \$150,000. It is our intent to replace one-half of the computers this fiscal year and budget for the remaining computers in fiscal year 97/98. The Legal Department will request authorization for funding at the April Committee meeting.

A reminder that the Department's quarterly member agency dinner is scheduled for Monday, April 7, at 6 pm in the Oasis Cafeteria. Our guest speakers are Janet Morningstar of McCormick, Kidman & Barrons and Amanda Susskind of Richards, Watson & Gershon. They will be speaking on "Impacts of Proposition 218 on Water Agency Rates and Charges". All Committee members are cordially invited to attend.

The Legal Department will present an overview on the organization of the department pursuant to the Hildebrandt study for all new members, and will report monthly on pending and future issues for the Committee as a whole.