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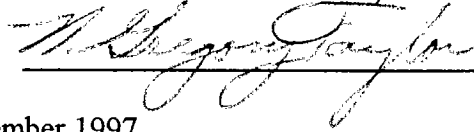
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

December 16, 1997

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

From: General Counsel



Subject: Legal Department Report for December 1997

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

This report discusses significant matters which the Legal Department was concerned with during the month of December 1997.

DETAILED REPORT

1. Recent Developments of Interest to Metropolitan

San Luis & Delta-Mendota Water Authority v. Department of Interior, et al.

Plaintiff, an association of Central Valley Project export water contractors, has filed this action to challenge the Department of Interior's adoption of eight actions to benefit fish and wildlife under authority of Section 3406(b)(2) of the Central Valley Project Improvement Act ("CVPIA"). That section authorizes the United States to "dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield" for fish and wildlife purposes. Plaintiff alleges that since enactment of the CVPIA, the United States already has implemented fish and wildlife actions resulting in the dedication of 800,000 acre-feet of CVP yield. On November 20, 1997, the United States issued a plan requiring a new set of eight actions under authority of Section 3406(b)(2), asserting that sufficient CVP yield is still available for fish and wildlife purposes. The complaint alleges that (1) with the eight new actions, the United States has dedicated more than the 800,000 acre-feet contemplated in the CVPIA and its action is therefore "beyond those authorized by law" and is "in excess of its statutory authority, or limitations;" (2) that adoption of the eight actions violates NEPA because the United States has not prepared an EIS or environmental assessment; and (3) the information on which the United States based its decision does not support the conclusion that the action will benefit fish and wildlife and is

therefore “arbitrary, capricious, an abuse of discretion, and is not in accordance with law, and is without factual basis.” The complaint seeks a temporary, preliminary and permanent injunction prohibiting the United States’ implementation of the eight actions. We are reviewing the complaint to determine what, if any, role Metropolitan should attempt to take in the litigation.

New District Headquarters Site

Construction of the new facility is on schedule for completion in November 1998 and within budget. Work has begun on the roof of the five-story wing and ninth floor of the twelve-story high-rise tower building. The work completed to date represents approximately 60% of the project. Approximately \$74 million has been expended (including land costs) or about 55% of the approved budget.

San Diego Aqueduct Transfer

The Department has been providing support and legal advice in the transfer of the ownership of the northern portion of the San Diego Aqueduct from the United States of America Bureau of Reclamation (“Bureau”) through the San Diego County Water Authority to Metropolitan. Assistance required preparation and review of a number of documents including a transfer agreement, quitclaim deeds, and a Board letter. With the Board action in October 1997 and execution by the Bureau, Metropolitan now owns a facility that it has been subleasing, operating and maintaining since the 1940s.

2. Litigation to Which Metropolitan is a Party

Southwest Center for Biological Diversity v. USBR

The Ninth Circuit Court of Appeal has denied plaintiff’s motion for expedited oral argument or, in the alternative, injunctive relief pending resolution of the appeal of this case. An appeal is pending in the Ninth Circuit from the Arizona District Court’s decision denying plaintiff’s request to require the Bureau of Reclamation to lower Lake Mead to protect habitat of the southwestern willow flycatcher and to invalidate United States Fish Service’s Biological Opinion for the Bureau of Reclamation’s water and power operations on the Lower Colorado River. In November, 1997, alleging that the passage of time pending appeal is destroying the habitat at issue in this case, plaintiff requested the Ninth Circuit to give it a priority hearing date and, if that was not possible, to order the Bureau to maintain Lake Mead at its current level. The United States, Metropolitan and other interested Colorado River contractors and the seven Lower Basin states opposed the motion. The Court denied the relief requested on December 10, 1997. The matter is fully briefed and it is expected that oral argument will be scheduled in late winter, 1998.

MWD v. All Persons Interested (Wheeling Rates Validation Action)

On December 9, 1997, Metropolitan filed its proposed order on the issues tried in November, as requested by the judge. These issues were whether Metropolitan (i) may

set "postage stamp" wheeling rates in advance of any particular wheeling transaction and (ii) may include system-wide costs in calculating its wheeling rates.

Metropolitan also received a form of proposed order submitted collectively by the San Diego County Water Authority, Imperial Irrigation District, Cadiz Land Company, Inyo-Mono County Farm Bureau, Chemehuevi Indian Tribe, Quechan Indian Tribe and Center for Public Interest Law. Each side has ten days from the filing of the proposed orders to file objections to the other side's proposal. Thus, it is expected that the court will issue its decision on these issues some time after December 19, 1997.

Metropolitan Water District v. San Bernardino Valley Municipal Water District et al.

The parties have executed a stipulation under which Metropolitan has refiled this case in Sacramento Superior Court after dismissing it in Los Angeles Superior Court. This step was taken because San Bernardino Valley Municipal Water District ("San Bernardino Valley") objected to the filing in Los Angeles County. Given this objection, it was probable under existing venue rules, that San Bernardino Valley would be successful in a motion to have the case moved. The parties have agreed that the case will continue to be considered as having been filed on the September 30, 1997 date of the Los Angeles filing. The discovery phase of the case has commenced and we have already received a response to a document production request made upon Santa Margarita Water District. The Department of Water Resources will also be filing its own complaint in support of Metropolitan's position. Santa Margarita Water District is no longer a defendant because it has executed a stipulation with Metropolitan agreeing to comply with any court order relating to service of State Project water into the service area.

Van't Hof v. Metropolitan, et al.

The Court of Appeal affirmed the trial court's judgment of nonsuit and order of dismissal, in an unpublished opinion, on September 17, 1997.

Van't Hof, a former Metropolitan employee, filed this action in July, 1997. With disciplinary action pending, he alleged that on December 16, 1982, a plastic light cover fell on him and caused him injury. Van't Hof applied for and was granted a disability retirement from PERS, based on these alleged injuries, but Metropolitan contested this award. This case arose from Van't Hof's belief that Metropolitan's challenge to the PERS award was illegal. The State of California is a co-defendant in the case.

This case proceeded to trial on June 12, 1995. After Van't Hof's opening statement, Metropolitan's Motion for Nonsuit was granted by Superior Court Judge Robert J. Higa. Subsequent to the Court of Appeal's decision, Van't Hof's Motion for Rehearing was denied and on October 28, 1997, he petitioned for Supreme Court review. Said Petition is pending.

Anibal Castillo v. Metropolitan, et al.

On December 4, 1997, Presiding Judge Mel Red Recana dismissed this case due to Castillo's failure to complete judicial arbitration and/or comply with delay reduction rules. Castillo allegedly sustained moderate personal injuries in an April 26, 1994, collision between a Metropolitan pick-up truck and Castillo's at an intersection.

Cynthia Aurthur v. David J. Fuller, et al.

On March 4, 1996, a Metropolitan employee was involved in a three-car, chain reaction, rear-end accident. Aurthur was in the car rear ended by the Metropolitan car. Aurthur incurred \$1,995.00 in medical bills and paid \$703.34 to repair her car. The matter was settled for \$5,352.50.

Kiewit Pacific Co. v. Metropolitan Water District

Kiewit Pacific Co. performed the excavation work for the west Dam at the Eastside Reservoir Project. Kiewit filed a claim for approximately \$1.6 million alleging "differing site conditions in the form of "soft ground" which Kiewit alleges impaired their ability to complete the work. The claim was denied. After appeal to the General Manager the claim was again denied. In November, 1997 Kiewit filed a complaint with the same allegations. The General Counsel has engaged the firm of Gibbs, Giden, Locher & Acret LLP ("Special Counsel") to assist in defense of this litigation. An answer to the complaint was filed on December 4 and Special Counsel has initiated discovery on behalf of Metropolitan.

3. Resource Matters

California Electric Industry Restructuring

The pace of activity has accelerated as California's electric utility industry is on the eve of commencement of restructuring on January 1, 1998. On December 1, 1997, Metropolitan filed at the Federal Energy Regulatory Commission a Request for Rehearing of the Commission's October 30, 1997 order conditionally authorizing commencement of operations of an Independent System Operator and Power Exchange. Such a filing preserves issues raised therein for subsequent consideration by the Court of Appeal, although Metropolitan does not anticipate that FERC will issue a final order in the ISO and PX dockets before 1999.

Metropolitan submitted four filings at FERC on December 4 on the following matters: the proposed changes to the ISO and PX tariffs and the newly revised ISO and PX Staging Plans; Pacific Gas and Electric's ("PG&E") filing to pass along to existing generation contract customers its PX costs; PG&E's filing to pass along to its transmission contract customers costs of ISO operations; and Southern California Edison's filing to pass along to its existing contract customers its PX and ISO costs. FERC is expected to issue an order regarding such filings at its last meeting of the year on December 17. Meanwhile, the ISO and PX Governing Boards will meet before the end of this month to determine whether each is actually capable of commencing operations on January 1.

State Water Resources Control Board Hearings

The State Water Resources Control Board ("SWRCB") has issued a Notice of Public Hearing to consider alternatives for implementation of the flow-dependent objectives contained in its May 1995 Water Quality Control Plan. The hearings will commence with several dates scheduled in March and April of 1998. In this hearing, the SWRCB will consider allocating responsibilities for meeting flow requirement to water rights holders other than the State Water Project and Central Valley Project. The SWRCB also will consider a petition to consolidate CVP places of use. Metropolitan is preparing to participate in the hearings jointly with the State Water Contractors and perhaps others.

4. Claims

None to report.

5. Financing

The sale of Metropolitan's \$650,000,000 Water Revenue Bonds, 1997 Authorization, Series A, closed on December 9, 1997. Documentation of the variable rate portion of the 1997 Authorization bonds (expected to consist of \$50,000,000 Series B and \$50,000,000 Series C) began in mid-December. The pricing and closing of both series is anticipated in mid-February.

The mid-December rally in the municipal and U.S. Treasury bond markets brought some outstanding water revenue bonds within range for refunding. The Master Resolution for Metropolitan's Water Revenue Bonds authorizes the refinancing of outstanding bonds, within specified parameters, to obtain a savings in overall interest costs. The Legal Department is working with Finance staff and Metropolitan's financial advisor to take advantage of refunding opportunities if market conditions permit.

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