



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

March 31, 1998

To: Board of Directors (Legal and Claims Committee--Information)
From: General Counsel
Subject: Legal Department Report for March 1998

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

This report discusses significant matters which the Legal Department was concerned with during the month of March 1998.

DETAILED REPORT

1. Recent developments of Interest to Metropolitan

None to report.

2. Litigation to Which Metropolitan Is a Party

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

Attorneys for Metropolitan and defendants Imperial Irrigation District, San Diego County Water Authority, Chemehuevi Indian Tribe, Quechan Indian Tribe and Center for Public Interest Law appeared before Judge Kay on March 13, 1998, in a hearing over costs which are payable by Metropolitan. The primary issue is whether these defendants are entitled to payment of attorneys' fees under §1021.5 of the Code of Civil Procedure, which is known as the private Attorney General law. To be awarded fees it must be shown that a significant benefit is conferred upon the general public. Personal economic interest in the litigation precludes an award of fees. As of the date of this letter, Judge Kay has not ruled on this matter.

MWD and Department of Water Resources v. San Bernardino Valley Municipal Water District and Western Water Company

San Bernardino Valley Municipal Water District has filed a demurrer to the CEQA cause of action included in the complaints brought by Metropolitan and the Department against San Bernardino and Western Water Company. The remaining cause of action relates to efforts to sell

state project water in Metropolitan's service area without Metropolitan's consent. It is anticipated that Western Water Company will join in the CEQA demurrer. The demurrer is scheduled for hearing in Sacramento Superior Court on April 17, 1998. Discovery is still proceeding.

Associated General Contractors, San Diego Chapter (AGC) v. MWD

This matter, filed February 27, 1998, in the U.S. District Court in San Diego, alleges that the Project Labor Agreements for both the Eastside Reservoir and Inland Feeder projects, or at least those portions of the Agreements which govern labor relations for the construction work being performed on the projects, are preempted under Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA). AGC alleges that Metropolitan, as a state entity, may not include language in its bid specifications that requires contractors awarded work on the projects to adopt those portions of local collective bargaining agreements which require contributions to ERISA benefit funds. Metropolitan has filed its response denying these allegations and demonstrating that the agreements are consistent with federal law. The matter is currently set for hearing on April 6, 1998, in San Diego before Judge Jeffrey Miller.

Planning and Conservation League et al. v. Department of Water Resources, et al.
(Monterey Agreement Litigation)

The Planning and Conservation League and the other petitioners were unsuccessful in their request that the California Supreme Court reconsider its January 22, 1998 decision upholding the quashing of service of summons on various contractors, including Metropolitan. The matter is now back therefore before the Court of Appeal on other aspects of this case. These primarily relate to the Superior Court decision upholding the Monterey Agreement as being in compliance with CEQA.

3. Resource Matters

Proposal to List Central Valley fall-run and spring-run salmon under the Federal Endangered Species Act.

The United States National Marine Fisheries Service (NMFS) has proposed listing the Central Valley spring-run salmon as an endangered species and the Central Valley fall-run salmon as a threatened species under the Federal Endangered Species Act (FESA). (The spring-run also is a candidate for listing under the California Endangered Species Act.) These proposed listings are part of a comprehensive review of west coast salmon stocks, which also proposed to list salmon in Washington, Oregon and Idaho. Under FESA, NMFS now has up to one year to determine whether to actually list these species; if there is substantial dispute over whether listing is justified or not, NMFS can extend that period by another six months. As part of its listing proposal, NMFS also recommends designating as "critical habitat" for these fish the Sacramento and San Joaquin rivers and all of their tributary streams, the Delta and San Francisco Bay north of the San Francisco/Oakland Bay Bridge. If the spring-run and fall-run are listed, State Water Project, Federal Central Valley Project and local water district operations could be negatively impacted throughout the Central Valley. Comments on the proposed listings are due

on June 8, 1998. Metropolitan is working with the State Water Contractors and perhaps others to review the listing proposal and to prepare appropriate comments

State Water Resources Control Board Hearings

The SWRCB has issued a Notice of Public Workshop on April 21, 1998 to discuss (1) hearing procedures and (2) proposed settlement agreements for implementation of its Water Quality Control Plan flow and other requirements. This notice was expected in order to carry out SWRCB's intention to restructure the hearing process to accommodate potential agreements among the parties regarding sharing the burden of implementing the requirements. Metropolitan and other exporters have been actively negotiating such agreements--the previously reported "VAMP" agreement on the San Joaquin River and the agreement with Yuba County Water Agency are examples. In anticipation of the notice, the exporters already have been preparing presentations and coordinating with the other parties to these agreements and with appropriate regulatory agencies.

4. Claims

None to report.

5. Financing

On March 18, 1998, Metropolitan issued \$50,000,000 Water Revenue Bonds, 1997 Authorization, Series B, and \$50,000,000 Water Revenue Bonds, 1997 Authorization, Series C. Each of these bonds bears interest at a variable rate of interest (initially 3.05%) which is reset weekly by the remarketing agent for the applicable Series. E.J. De La Rosa & Co., Inc. is the remarketing agent for the Series B bonds and Prager, McCarthy & Sealy is the remarketing agent for the Series C bonds.

6. Administrative Matters

A member of the Legal Department participated on a panel at the Water Education Foundation's annual Executive Briefing, "Decision '98," on the subject of the State Water Resources Control Board's Bay-Delta Water Rights Plan.

7. Member Agency Legal Counsel Dinner

The next Legal Counsel dinner will be held on Monday evening, April 13, 1998 at 6:00 p.m. in the Oasis dining room located on the Watercourt Level. The speaker will be Kenneth B. Bley of the law firm Cox, Castle & Nicholson. He will discuss recent developments in the case of *People of the State of California, Department of Transportation v. Southern California Edison*. The title of Mr. Bley's presentation is "Life is Timing: Failure to deal promptly with a landowner once condemnation is in the picture can lead to writing a much bigger check than expected." Board Members are invited to attend. (Please RSVP to Grace at 213-217-6322.)