



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-2

August 31, 1998

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

**From:** General Counsel

**Subject:** Legal Department Report for August 1998

## **RECOMMENDATION(S)**

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For information only.

## **EXECUTIVE SUMMARY**

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

## **DETAILED REPORT**

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### **1. Recent developments of Interest to Metropolitan**

None to report.

### **2. Litigation to Which Metropolitan Is a Party**

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

For a second time, Judge Jeffrey Miller of the U.S. District Court in San Diego granted Metropolitan's Motion to Dismiss the action. Consistent with his previous ruling, Judge Miller held that project specifications requiring contractors to agree to work under Project Labor Agreements in effect for the Eastside Reservoir and Inland Feeder Projects do not amount to "state laws" and are not preempted under Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA). Because the Dismissal was granted with prejudice, AGC will likely appeal the decision to the Ninth Circuit Court of Appeals. Currently pending is AGC's appeal of Judge Miller's denial of its initial motion for injunctive relief.

#### MWD v. Kiskila

This matter has been settled for a payment of \$80,000 new money, pursuant to authorization of your Board. The Kiskilas' property, Parcel 144-1-7879, is located in an area subject to conceded noise impacts during construction at the East Dam. Your Board authorized the acquisition of this property by condemnation, pursuant to project mitigation plans for potential noise and dust impact. Initially offered \$260,000, the Kiskilas rejected the offer and

demanded \$782,285 for the property, plus \$220,000 in moving and business relocation costs, and \$350,000 in nuisance and personal injury claims. The \$260,000 appraisal amount was deposited in the State Condemnation Deposit Fund, and withdrawn by the Kiskilas. After filing of the eminent domain action, the Kiskilas cross-complained seeking extensive personal injury and precondemnation damages. The Kiskilas have appeared at numerous meetings of Metropolitan's Board of Directors and committees to set forth their position. At its April 1998 meeting, the Board of Directors authorized settlement offers of \$300,000 for the property, and \$40,000 for the cross-complaint. The Kiskilas demanded \$1.3 million. However, with a trial date scheduled for August 17, 1998, and after the cross-complaint was partially eliminated by motion for summary judgment, the Kiskilas agreed to take Metropolitan's offer of \$340,000 in total, or \$80,000 in addition to the \$260,000 already withdrawn. The Kiskilas have now stipulated to a judgment in the condemnation matter, and have agreed that they will not pursue the cross-complaint, and have executed a complete and general release. This matter is now concluded. This, incidentally, concludes the last eminent domain action pending or contemplated with regard to the Eastside Reservoir Project.

### **3. Resource Matters**

The State Water Resources Control Board continued its water rights hearings regarding implementation of flow and other requirements in its 1995 Water Quality Control Plan. In August, the State Board finished hearing the case in support of adoption of the San Joaquin River Agreement (also known as "VAMP") and determined that the agreement merits further consideration. It scheduled additional hearing dates at which opponents of the agreement may submit testimony and evidence in support of alternative mechanisms to implement the San Joaquin River portion of the flow requirements. The State Board also completed hearings on whether to adopt the Suisun Marsh Preservation Agreement (between the Department of Water Resources, Bureau of Reclamation, Department of Fish and Game and the Suisun Resource Conservation District) for implementation of Suisun Marsh objectives and began hearings on a number of proposed settlement agreements and stipulations regarding allocation of responsibility for providing required flows. Additional hearing dates have been scheduled through October, 1998 and it is anticipated that more dates will be added later.

### **4. Claims**

None to report.

### **5. Financing**

A rally in the bond market brought the refunding of outstanding revenue and general obligation bonds within range of the savings targets previously set by the Board. Legal Department staff worked with the Finance and Business Services Division staff to update the Preliminary Official Statements for mailing to potential investors.

### **6 Administrative Matters**

Linda Santos, Law Office Administrator, left Metropolitan the end of July to accept a position in the Torrance City Attorney's Office. Linda has been replaced by Beverly Linderman,

who transferred to the Legal Department from the Human Resources Division where she was the Human Resources Manager. Beverly has been employed in the Human Resources Division since 1989.

**7. Member Agency Legal Counsel Dinner**

The next Legal Counsel dinner will be held on Monday evening, October 12, 1998 at 6:00 p.m. in the Oasis dining room located on the Watercourt Level. The speaker will be Marc Reisner, author of "Cadillac Desert." Mr. Reisner will be speaking on new trends and issues in California water policy and what the future holds for California water management. Board Members are invited to attend. Please RSVP to Grace Yenko at 213-217-6322.

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