



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

FILED  
By the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held

43242

OCT 13 1998

9-2

*Dawn Cain*  
EXECUTIVE SECRETARY

September 30, 1998

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

*M. Gregory Taylor*

**RECOMMENDATION(S)**

---

For information only.

**EXECUTIVE SUMMARY**

---

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

**DETAILED REPORT**

---

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

Barstow v. Mojave Water Agency

The California Supreme Court has agreed to review the Fourth District Court of Appeal's decision in this case. Because the appellate court's opinion discussed important water law issues, and the Supreme Court also will address those issues, the General Counsel is seeking authorization to participate in the case as amicus curiae to protect Metropolitan's interest. (See General Counsel letter dated September 28, 1998, Item 7-15)

Proposed Listing of Spring-Run Salmon

At its last meeting, the California Fish and Game Commission found that the Sacramento River spring-run salmon warrants listing as a threatened species under the California Endangered Species Act. As required by that Act, the Commission therefore initiated a rule making process to add the spring-run to the state list of threatened species. That action is currently scheduled for the Commission's November 6, 1998 meeting. The Commission also directed the Department of Fish and Game to provide information on a potential numerical standard or index which could be used to revise pumping at the state and federal water project diversion pumps.

### State Water Contract

A member of the Legal staff participated in negotiations with the Department of Water Resources and other state water contractors regarding proposed revisions to the State Water Contract, which is being separately reported on to the Board by the General Manager.

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

### Kiewit Pacific Co. v. MWD

In July it was reported that Metropolitan's summary judgment motion was granted, dismissing Kiewit's claim. As anticipated Kiewit filed its appeal. The appeal process will take approximately six months.

### Richard DeVuyst and Linda DeVuyst vs. MWD

On September 25, 1998, the District was served with a Complaint seeking compensation for inverse condemnation by Richard and Linda DeVuyst. Plaintiffs' claim that the District damaged or destroyed growing crops (alfalfa) during the course of the Inland Feeder construction in the Lakeview area of Riverside County. Apparently the crops were located on land subject to a temporary construction easement and owned by a third party who has been fully compensated for the easement. To date, plaintiffs have been unable to verify a lease or other right to farm this land. The General Counsel will take all steps to protect the District's interest.

### Melvin and Uta Fox v. CalTrans, et al.

Plaintiffs Melvin and Uta Fox allege that, beginning in 1993, various entities, including the City of Los Angeles, CalTrans and Kessler Construction, caused water intrusion and subsidence damages to their residence. These entities were all involved in the construction of a new freeway offramp in the Woodland Hills area, where plaintiffs' residence is located. This is the same CalTrans project which necessitated the relocation of the Calabasas Feeder, a Metropolitan construction project. On April 17, 1998, plaintiffs substituted Metropolitan into the case as a Doe defendant. Metropolitan's relocation project was located approximately 500 feet from plaintiffs' residence.

Metropolitan has settled with plaintiffs for \$11,500. After filing its Answer on June 24, 1998, Metropolitan served a Code of Civil Procedure Section 998 settlement offer in the amount of \$11,500. After protracted negotiation, plaintiffs finally agreed to a settlement in this amount. This settlement represents a significant cost savings in that the defense of this case would probably have cost Metropolitan \$40,000 to \$50,000 in expert fees and trial preparation.

Before filing an Answer, Metropolitan tendered the defense of this case to Pascal & Ludwig's insurance carrier because Metropolitan was named as an additional insured in the construction project's prime contractor's general liability policy. The carrier's representative, AIG Claim Services, Inc., refused to make a coverage decision before Metropolitan's Answer was due. Now that the case has settled, Metropolitan shall demand a sum certain for all amounts, including attorney's fees, above the policy's \$10,000 deductible.

**3. Resource Matters**State Water Resources Control Board Water Rights Hearings

The State Water Resources Control Board heard several days of testimony during September regarding potential water rights settlement agreements and alternatives to meeting the Southern Delta Salinity and dissolved oxygen objectives of its Water Quality Control Plan. The State Water Contractors supported the Department of Water Resources' recommendation that it be allowed to build operable barriers in the South Delta and on the San Joaquin River which would remedy salinity and water level problems for agricultural uses and benefit migrating San Joaquin River salmon.

Additional days of hearings are scheduled for October, with more to be scheduled in November and following months, to finish the salinity and dissolved oxygen issues, to consider whether to allow the state and federal water projects to divert at each other's points of diversion ("joint point of diversion") and to consider whether to consolidate the place of use of the Central Valley Project. Sometime in early 1999 the state Board will begin hearings on the final issue in these proceedings -- how to allocate the responsibility to provide the flows required by the Water Quality Control Plan.

**4. Claims**

None to report.

**5. Financing**

Metropolitan's \$148,705,000 Water Revenue Refunding Bonds, 1998 Series A, \$62,120,000 Waterworks General Obligation Refunding Bonds, 1998 Series A and \$50,000,000 Waterworks General Obligation Bonds, Election 1966, Series H were issued on September 22, 1998. Legal department staff worked with Finance and Business Services Division staff, the underwriters, Metropolitan's financial advisor and outside counsel to close this transaction.

**6 Administrative Matters**

None to report.

**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.