

October 30, 1998

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

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

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

DETAILED REPORT

1. Recent developments of Interest to Metropolitan

Barstow v Mojave Water Agency

The appealing parties have filed their opening briefs with the Supreme Court in this case. Appellants are the parties who stipulated to an equitable apportionment of rights to the Mojave groundwater basin which was adopted by the trial court as its judgment in the case. The Fourth District Court of Appeal reversed the trial court's judgment on an appeal by private pumpers who had not agreed to the stipulation and the Supreme Court agreed to review the appellate court's decision. Metropolitan continues to prepare its *amicus curiae* brief and discuss possible joint filings with other parties consistent with the Board's direction at its September, 1998 meeting.

San Luis & Delta-Mendota Water Authority v. U.S. Department of Interior and Save San Francisco Bay Assn. v. U.S. Department of Interior

The court has set a hearing on partial summary judgment motions in this matter for January 13, 1999. As reported earlier, each of these actions attack the Department of the Interior's November 1997 plan to implement the dedication of 800,000 acre-feet of Central Valley Project yield to fish and wildlife purposes as required by the Central Valley Project Improvement Act (CVPIA). The cases have been consolidated before Judge Oliver Wenger in the Federal District Court in Fresno. The San Luis & Delta-Mendota Water Authority alleges, among other matters, that with the new actions required in the November 1997 plan, Interior has dedicated more than the 800,000 acre-feet contemplated by the CVPIA and is therefore in excess of its

statutory authority. The Save San Francisco Bay Assn.'s main allegations are that the November 1997 plan is inadequate and that the State Water Project (SWP) is illegally diverting and exporting a portion of the water dedicated to the environment. The January 13, 1999 hearing will focus on whether the November 1997 plan is consistent with the CVPIA requirements. The State Water Contractors intend to file an amicus curiae brief in support of the San Luis & Delta-Mendota Water Authority. The allegation against the SWP will not be at issue in the January 1999 hearing.

Westlands Water District v. State Water Resources Control Board

The Westlands Water District and the San Luis & Delta-Mendota Water Authority (both referred to as Westlands) filed this action in the California Superior Court, County of Sacramento on October 16, 1998. It seeks a writ directing the State Water Resources Control Board State Board to accept a protest Westlands filed in response to a Bureau of Reclamation (Bureau) application to amend certain of its water rights permits.

In July, 1997, the Bureau filed an application with the State Board to amend its permits for the American River division of the Central Valley Project (CVP). The application sought authorization to add places of diversion/rediversion and places of use in Sacramento County, which would accommodate deliveries of up to 22,000 acre-feet of American River water to those new areas. Because these new deliveries could reduce American River division water available for delivery to Westlands, Westlands filed a protest to the application, citing Water Code Section 1702. That section provides that an application may not be approved unless the State Board finds that it will not operate to the "injury of any legal user of the water involved." However, the State Board refused to accept the petition, asserting that Westlands' contract rights to receive water from the Bureau did not qualify it as a "legal user of the water involved," so that it had no standing to protest the Bureau's application.

The General Counsel is reviewing the pleadings and documents in this case to determine its implications, if any, for Metropolitan. A decision affirming the State Board position that a water project contractor is not a "legal user of water" potentially could have the effect of limiting the ability of such contractors to protect their contract rights in a variety of situations.

2. Litigation to Which Metropolitan Is a Party

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

The Ninth Circuit Court of Appeals has affirmed the judgment of District Court Judge Jeffrey Miller dismissing, with prejudice, the action brought against Metropolitan. AGC had challenged Metropolitan's use of Project Labor Agreements for the Eastside and Inland Feeder Reservoir Projects, contending that the agreements were preempted under Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, the court ruled that although AGC had standing to bring the action, Metropolitan's bid specifications do not amount to "state law" and are not preempted under ERISA.

Van't Hof v. Metropolitan

Van't Hof, a former Metropolitan employee, filed this action in July, 1987. His last day working for Metropolitan was December 16, 1982. He alleged that on that day a plastic light cover fell on him and caused him injury. Van't Hof also filed a Workers' Compensation claim and the appeal of Metropolitan's denial of this claim is still pending.

Van't Hof also applied for and was granted a disability retirement from PERS, but Metropolitan contested this award. This case arose from Van't Hof's belief that Metropolitan's challenge to the PERS award was illegal.

On September 17, 1997, the Court of Appeal affirmed the Trial Court's granting of Metropolitan's Nonsuit Motion. On December 10, 1997, the California Supreme Court denied Van't Hof's Petition for Review. On October 5, 1998, the United States Supreme Court denied Van't Hof's Petition for a Writ of Certiorari.

Cloyd v. MWD

This inverse condemnation matter, which has been trailing for trial in Riverside County since early this year, has settled between the parties. In this action, Kenneth Cloyd, other individuals and California Truss Company sought damages from the District for severance, lost goodwill and precondemnation activities relating to the District's purchase of property as part of a buffer zone adjacent to the District's Chemical Unloading Facility near Perris in Riverside County. When the District purchased the plaintiffs' 9.13 acres of property in October 1993, plaintiffs insisted on the right to make a claim for lost goodwill, predicated upon plaintiffs' anticipated development of the property and expansion of the ongoing truss making business. This lawsuit followed. After three years of intensive discovery, the retention of experts, preparation for trial and until very recently demands in excess of \$4,000,000, Plaintiffs agreed to settle for \$125,000, which is the General Manager's settlement authority under Administrative Code § 6433(a). In exchange the District has received a complete release and dismissal of the action with prejudice. This concludes this litigation.

3. Resource Matters

State Water Resources Control Board Water Rights Hearings

State Water Resources Control Board hearings on alternatives to meet the Southern Delta salinity and dissolved oxygen objectives of its Bay/Delta Water Quality Control Plan were completed in October. Hearings on Phase 2A, affording parties opposing adoption of the San Joaquin River Agreement (also known as VAMP) an opportunity to present their arguments, are next on the schedule. Metropolitan and other export parties will continue to support the Agreement in these hearings. The Board also added additional hearing dates in November and December. A more detailed status of the hearings is contained in a separate letter from the General Manager dated October 27, 1998, Item 9-8.

State Water Contract

Legal staff assisted the General Manager's staff on negotiating various proposed amendments to the State Water Contract.

4. Claims

None to report.

5. Financing

Legal Department staff worked with outside bond counsel to prepare a resolution supplementing Metropolitan's master revenue bond resolution, which will be considered by your Board this month. This resolution would permit Metropolitan to take advantage of low interest rates in the municipal bond market to retire outstanding commercial paper notes through the issuance of fixed-rate water revenue bonds. Legal Department and Finance staff also are preparing the documentation necessary for the issuance of additional refunding bonds, which would be sold in the event that the savings targets set by your Board are met.

6 Administrative Matters

The Department will be moving into its new offices on the 11th floor of the new headquarters building the weekend of November 21-22, 1998. Notification of the Legal Department's new address is being sent to all opposing counsel and courts in which Metropolitan has pending litigation, as well as outside counsel and other interested parties.

NGT:sk