

February 23, 1999

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

**From:** General Counsel \_\_\_\_\_

**Subject:** Legal Department Report for February 1999

## RECOMMENDATION(S)

For information only.

## EXECUTIVE SUMMARY

This report discusses significant matters which the Legal Department was concerned with during the month of February 1999.

## DETAILED REPORT

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

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

The Federal District Court in Fresno heard argument on a motion for partial summary judgment in this case on February 8, 1999. The issue to be determined is whether, as the San Luis & Delta Mendota Water Authority asserts, the Department of the Interior's November 1997 plan to implement the 800,000 acre-foot environmental water dedication of the Central Valley Project Improvement Act is invalid because it will result in a loss of more than the 800,000 acre feet of yield designated by Congress. The State Water Contractors participated in the argument as amicus curiae in support of the San Luis & Delta Mendota Water Authority's position. The court's decision on the matter is still pending.

Just prior to the hearing, the court accepted an amended motion by the California Department of Water Resources (DWR), as amicus curiae, also in support of the San Luis & Delta Mendota Water Authority. As reported last month, a prior motion which had been filed by DWR was withdrawn at the request of the new Secretary of the California Resources Agency. Upon reconsideration, the Davis Administration filed the amended motion.

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

### Southern California Edison Company v. The United States

On February 2, 1999, the United States Court of Federal Claims trial court in the above-referenced matter issued a decision regarding the United States' distribution of overcollected revenues from the first Hoover Power Plant contract. While the court agreed with arguments asserted by Metropolitan, the federal government and other original Hoover contractors that the Western Area Power Administration's allocation determination was entitled to deference, if reasonable, it concluded that Western's methodology was unreasonable and remanded for further consideration. The court rejected in part the argument of plaintiffs Edison and City of Los Angeles, Department of Water and Power that would have substantially increased their share of the overcollected revenues. As of the date of this writing, Metropolitan, the United States and the remaining original Hoover contractors plan to appeal the decision.

## 3. **Resource Matters**

### Listing of the Sacramento Splittail as Threatened Under the Federal Endangered Species Act.

The United States Fish and Wildlife Service (USFWS) has listed the Sacramento Splittail as a threatened species under the Federal Endangered Species Act, effective March 10, 1999. The listing decision makes no attempt to estimate the actual number of splittail, but asserts that the population has declined by 62 percent in the last 15 years and that proposed future water supply projects could degrade splittail habitat. However, the listing decision dismissed a number of population surveys indicating that splittail numbers are higher than they have been for many years--in some cases the highest since the surveys began--and dismissed recent indications that splittail inhabit many areas upstream of the Delta which have not been monitored by USFWS. The State Water Contractors and many other organizations are reviewing the listing decision and drafting potential notices of intent to sue, which are required prior to initiating litigation under the Endangered Species Act.

## 4. **Claims**

None to report.

## 5. **Financing**

None to report.

## 6. **Administrative Matters**

Nothing to report