

April 23, 1999

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

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

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

## RECOMMENDATION(S)

For information only.

## EXECUTIVE SUMMARY

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

## DETAILED REPORT

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

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

Plaintiff San Luis and Delta-Mendota Water Authority (Authority) has obtained an order from the Federal District Court in Fresno for injunctive relief restraining the Department of the Interior from implementing certain fishery actions in violation of Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA). Last month the District Court agreed with the Authority that Interior's proposed actions under Section 3406(b)(2) were invalid because Interior failed to first calculate the impacts of the proposed actions to determine whether they would cost more than the 800,000 acre feet of CVP yield authorized by the CVPIA. The Court ordered Interior to do such a calculation within 180 days. However, Interior still intends to carry out a number of its proposed actions this spring while it is completing its calculation of CVP yield impacts. The Authority alleged that the yield impact will in fact show that the proposed actions will exceed Interior's authority under (b)(2), so that the Court should enjoin them until the calculation is completed. The court fashioned an order allowing Interior to carry out its fisheries actions, but still protect plaintiffs from water supply impacts above those authorized in the CVPIA, by ordering Interior to purchase or otherwise obtain the water necessary to make-up any yield impacts identified in its yield impact calculation caused by the fishery actions.

## 2. Litigation to Which Metropolitan Is a Party

### Velasquez v. Eastside Reservoir Project, et al.

On March 25<sup>th</sup> the Workers' Compensation Appeals Board (WCAB) upheld the validity of the alternative dispute resolution program established by the Eastside Reservoir Project Labor Agreement (PLA) under section 3201.5 of the Labor Code.

The decision overturned an administrative law judge's ruling that the WCAB maintained concurrent jurisdiction over certain workers' compensation issues; a decision which could have resulted in inconsistent findings on pending claims and an overall increase in administrative costs. The Appeals Board, in agreement with Metropolitan and other PLA proponents, clarified that jurisdiction for resolution of the pending claims lies exclusively within the PLA process and may only be appealed after an arbitrator's final decision. The Board also found that the mediation/arbitration process may include resolution of claims related to serious and willful misconduct, Labor Code section 132a claims (alleging discrimination against the employee for having sustained an injury in the course of employment) and vocational rehabilitation issues.

Mr. Velasquez was injured by an electrical shock on June 28, 1996, while working on the Eastside project and has received benefits since that time. Through his attorney, Mr. Velasquez has challenged the alternative dispute program on a number of grounds including the constitutionality of Labor Code 3201.5, as well as jurisdictional issues regarding the program's ability to hear serious & willful and Labor Code section 132a issues. The decision sends the matter back to the workers' compensation administrative law judge for further action consistent with the decision. It is likely that the petition will be dismissed and the matter ordered to proceed through the mediation/arbitration process.

## 3. Resource Matters

### State Water Resources Control Board Water Rights Hearings

The State Board completed Phase 7 of its hearings regarding implementation of the flow and water quality requirements in its May 1995 Water Quality Control Plan for the Bay/Delta. Phase 7 dealt with the Bureau of Reclamation's petition to conform and consolidate the place of use of water exported from the Delta. The only new phase remaining is Phase 8, in which the flow responsibilities will be allocated among the parties. Metropolitan is working with other State Water Contractors to prepare its case in that phase. It is not clear when Phase 8 will start, because the State Board is considering whether and how to issue interim orders with respect to issues raised in the first seven phases. If the State Board does not issue such orders, Phase 8 could begin in early June; if it does, Phase 8 likely would not begin until perhaps September.

The State Board also set a number of June, 1999 hearing dates to consider the petition of a number of San Joaquin River parties requesting a change in place and purpose of use in their water rights permits for the purposes of implementing the San Joaquin River Agreement/VAMP. Under that agreement, certain of the San Joaquin River parties will release additional water in the spring to meet a pulse flow at Vernalis required by the Agreement/VAMP. The change in their water rights permits is required to authorize them to release water for use for environmental purposes at Vernalis. State Board has designated this process as Phase 2B of its water rights hearings because it is related to the request by many of the parties (including Metropolitan) that

the State Board adopt the Agreement/VAMP as its implementation plan for meeting San Joaquin River flow requirements. In the meantime, on April 9, 1999, the State Board approved a temporary change in the San Joaquin River parties' permits to allow the VAMP experiment to be implemented in 1999.

**4. Claims**

None to report.

**5. Financing**

None to report.

**6. Administrative Matters**

The Department has developed a set of guidelines which provide specific direction concerning the billing of fees and expenses by outside counsel. Future agreements will incorporate these guidelines.

NGT:sk