

July 14, 1997

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

METROPOLITAN WATER DISTRICT'S COMPLAINT
FOR VALIDATION OF WHEELING RATES

Deputy Mayor Warden requested that the City Attorney's Office investigate the possibility of intervening in legal action filed by the Metropolitan Water District of Southern California (MWD). MWD has filed a validation action to confirm the rates they seek to charge for conveying water through their facilities. The conveyance of water through one entity's system to another is called "wheeling." At this time, the City cannot legally intervene in MWD's action. We are therefore recommending that we monitor the case and assist the Imperial Irrigation District (IID) and the San Diego County Water Authority (CWA) in their response to MWD's action. If their demurrer to the action is granted, the City may then have an opportunity to enter the lawsuit. After the demurrer ruling, we will notify the Mayor and Council to recommend whether the City should take any action.

MWD currently maintains an extensive water collection system throughout Southern California to import water. Its membership consists of seven cities and counties within MWD's service area. Improvements are funded by the sale of water to all its member agencies. CWA is one of MWD's member agencies. CWA has approximately 34 members; 10 members are representatives for the City of San Diego. CWA purchases approximately 27% of MWD's overall water supply.

In a separate but related action, CWA is currently negotiating with IID to purchase water that it would transport through MWD's aqueducts to San Diego. Additionally, while CWA is actively litigating the validation action against MWD, it is trying to negotiate a settlement with MWD. Concurrently, several different parties are working on settling the wheeling rate issues. This includes proposed statewide wheeling legislation and active intervention by California's Secretary of Resources. A comprehensive report by CWA on related water issues is docketed for the City's July 16, 1997, Natural Resources & Culture Committee.

Legal Issues

MWD filed its validation action on January 14, 1997. A validation action acts as a preemptive strike by attempting to force all legal challenges to wheeling rates to be settled in one court action rather than piecemeal. The validation action was directed to "all persons interested" and was published in local newspapers. Currently, CWA and IID are both parties in the validation action. The time to respond to MWD's complaint expired in early May. As a member of CWA, the City is challenging the validity of MWD's validation action. As a party separate from CWA, the City cannot currently challenge MWD's action.

On July 20, 1997, a demurrer hearing is set in San Francisco Superior Court. The demurrer to MWD's validation action seeks, on three grounds, to prevent MWD from proceeding with the entire action. First, the demurrer asserts that MWD's notice of the validation action was inadequate since it did not specify that wheeling rates would be validated. If this is found to be a valid challenge, MWD would be required to re-notice the action and the City would then have the opportunity of becoming a party to the action.

Second, the demurrer challenges whether a validation action is a proper means to authorize wheeling rates. Legally, MWD is only authorized to file a validation action to secure its debts. Here, MWD is attempting to prevent an attack on its proposed wheeling rates by pledging the rate income toward its existing debt.

Finally, the demurrer challenges MWD's formula for calculating the wheeling rates, arguing that the formula violates state law by including the costs of maintaining and expanding MWD's entire statewide operation. As such, the rates are based upon *all* of MWD's statewide activities regardless of any relationship to water transfer or use of conveyance facilities.

City's Action

The City Attorney has offered to assist CWA and IID in pursuing their legal action against MWD. We will continue to monitor the litigation and inform the Mayor and Council of any significant legal ruling. After the July 20 demurrer hearing, we will advise you of the outcome, present you with options, and recommend a course of action.

Respectfully submitted,

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City Attorney

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