

• General Counsel's December 2003 Monthly Report

Summary

This report discusses significant matters in which the Legal Department was involved during the month of December 2003.

Attachments

None.

Detailed Report

1. Litigation/Claims to Which Metropolitan Is A Party

Arizona v. California

On December 8 and 9, 2003, Special Master McGarr heard oral argument on certain summary judgment motions in *Arizona v. California* in Chicago. The summary judgment motions were limited to the issues of whether certain statutes and agreements have caused either a cession of title by the Quechan Tribe or a diminishment of the Fort Yuma Reservation boundary. If such a cession or diminishment is found to have occurred, it will probably bar any further claim for reserved water rights by the Quechan tribe. The Special Master did not indicate when he would rule on the motions but we expect that the Master may take several months to review the voluminous briefs and documentary evidence that was submitted with the motions. We also understand that a private landowner filed a motion to intervene in the *Arizona v. California* litigation a few days ago. Although we have not yet received the intervention papers, we expect widespread opposition to any further intervention by new parties at this late date.

2. Other Matters Involving Metropolitan

El Dorado Irrigation District v. State Water Resources Control Board and El Dorado County Water Agency v. State Water Resources Control Board

Sacramento Superior Court Judge Connelly issued a "Revised Ruling on Submitted Matter" on December 23, 2003, affirming and expanding his earlier ruling in this matter. As reported previously, Judge Connelly's earlier ruling set aside the State Water Resources Control Board's (SWRCB) inclusion of Term 91 in plaintiffs' water rights permits. The basis for that ruling was the fact that plaintiffs' water rights applications were based on state-assigned filings under the County of Origin law with a priority date of 1927. Because Term 91 is imposed only on water rights permits issued after 1965, there are many other water users with priority dates after plaintiffs' 1927 date but before 1965 who have not had Term 91 imposed on them. The judge's initial decision to set aside imposition of Term 91 on plaintiffs appeared to be based largely on this discrepancy. However, the SWRCB subsequently filed a motion for clarification of the ruling. In his December 23, 2003 revised ruling, the Judge affirmed and expanded on his initial ruling, but also added for the first time an apparent conclusion that water users in the area of origin are entitled to use water stored by the state and federal water projects. The State Water Contractors, who intervened in the action, and other parties who supported the SWRCB are reviewing the ruling to determine its effect and how best to respond.

3. Matters in Which Metropolitan Is Not A Party

Tulare Lake Basin Water Storage District v. United States

The United States Court of Claims has awarded the Tulare Lake Basin Water Storage District, Kern County Water Agency and three of their member agencies \$13,915,364 in damages as compensation for water they lost due to Federal Endangered Species Act (FESA) restrictions imposed during the years 1992-1994. Plaintiffs had sought \$65,697,866. Plaintiffs are all State Water Project (SWP) contractors or subcontractors. In the early 1990's federal fishery agencies listed the Delta smelt and winter-run salmon as endangered species under FESA and adopted biological opinions and associated operational requirements on the SWP. Those requirements were more restrictive than existing regulations on SWP operations imposed by the California State Water Resources Control Board and reduced the total available SWP supply. Plaintiffs therefore alleged that the federal fishery agencies had reduced plaintiffs' state-established property right in their SWP contracts in violation of the Fifth Amendment of the United States Constitution. In April 2001 the Court of Claims decided the legal issue in favor of plaintiffs, holding that plaintiffs' right to SWP water as established by California law had been impaired by the fishery agency actions and that plaintiffs were entitled to damages. The Court held a several day trial on the issue of the amount of damages in July 2002 resulting in its December 31, 2003 determination that the United States was liable for damages of \$13,915,364.

Because of its large SWP entitlement, Metropolitan did not suffer any diminishment of its water supply during 1992-94 that would have supported a similar damage claim. While the SWP could not meet full *entitlements* it did have sufficient supplies to deliver the full amount of Metropolitan's *requests* during those years. Also, the State Water Resources Control Board subsequently adopted the federal fishery agencies' requirements in 1995. Since those state-imposed requirements now define the contractors SWP property rights, any loss in those supplies caused by those restrictions cannot be the subject of a takings claim under the federal Constitution.

4. Finances

The sale of \$338,230,000 Water Revenue Refunding Bonds, including an interest rate swap and standby bond purchase agreement, closed on December 18, 2003. The Legal Department issued legal opinions required for closing and assisted bond counsel and Finance staff in finalizing and executing documents. The Legal Department also prepared Metropolitan's annual information filing, required of municipal bond issuers under Securities and Exchange Commission Rule 15c2-12, and filed the required documents with the four nationally recognized municipal securities information repositories on December 26, 2003.