

• **General Counsel's April 2004 Monthly Report**

Summary

This report discusses significant matters in which the Legal Department was involved during the month of April 2004.

Detailed Report

1. Litigation/Claims To Which Metropolitan Is A Party

a. *Aerojet-General v. Metropolitan, et al.*

On April 14, 2004 Metropolitan was served by Aerojet-General Corp. (Aerojet) with four third party complaints arising from litigation currently pending in the U.S. District Court in Los Angeles. The complaints allege that importation and spreading of Colorado River water into the South El Monte Operable Unit (SEMOU), a part of the San Gabriel Valley groundwater basin, has caused the "release, transport, and disposal of hazardous substances into and through the SEMOU." The actions seek contribution under CERCLA and state law toward cleanup costs and declaratory relief. Also named in the third party complaints are the Upper San Gabriel Valley Municipal Water District, Main San Gabriel Watermaster, Los Angeles County Department of Public Works, Southern California Edison Co. and several other individual and corporate entities. The underlying cases, originally filed by the City of Monterey Park, San Gabriel Basin Water Quality Authority, San Gabriel Valley Water Co., and Southern California Water Company, seek cleanup costs, damages, and injunctive relief, related to contamination of the San Gabriel Valley groundwater basin from Aerojet and other entities. Metropolitan is evaluating the complaints and preparing a response.

Underlying Claims – San Gabriel Valley Basin (SEMOU)

Metropolitan has received 12 claims alleging damages related to cleanup costs claims arising from contamination of the San Gabriel Valley groundwater basin. The claims all arise out of the pending litigation against Aerojet referenced above. Such claims are statutorily required prior to the filing of certain actions against a public entity, such as Metropolitan, and indicate that litigation is contemplated against the agency. Claimants include Aerojet, Del Ray Industrial Enterprises, Inc., Astro Seal, Inc., Art Weiss, Inc., Time Realty Investments, Inc., Tri-Fitting Manufacturing Co., M&T Company, and several individuals.

b. *Arizona v. California*

In this matter, the parties have engaged a neutral third-party mediator to explore settlement possibilities in the case. The mediation has been set for mid-May. The Special Master has set a trial date of September 13, 2004.

c. *Electric Industry Restructuring*

On April 9, Metropolitan and other agencies submitted briefs on exceptions to respond to the Administrative Law Judge's (ALJ) Initial Decision regarding transmission access charges. The ALJ determined that a flat transmission charge was appropriate over water agency arguments that charges should take into account peak usage. Rates based on peak usage would benefit agencies that have flexibility and increase the overall efficiency of the transmission system by incentivizing non-peak usage. FERC will now make a final ruling on the matter.

d. Enron Power Marketing, Inc. v. Metropolitan

On April 19, 2004, Enron Power Marketing, Inc. filed an adversary proceeding against Metropolitan in U.S. Bankruptcy Court, Southern District of New York (where Enron's bankruptcy is being administered). Enron's complaint includes seven causes of action based upon Metropolitan's alleged breach of its energy contract, and seeks recovery of \$1.28 million in damages. Metropolitan believes Enron's complaint lacks merit, and we intend to oppose the complaint. All Enron litigation is currently stayed, and the matter will likely be ordered into judicial mediation.

e. San Diego County Water Authority et. al. v. Metropolitan (Preferential Rights Case)

The San Diego County Water Authority filed a Petition For Rehearing and Request for Judicial Notice with the California Court of Appeal on April 9, 2004, asking the Court to reconsider its opinion affirming the San Francisco Superior Court's dismissal of the Authority's First Amended Complaint. The complaint had alleged that Metropolitan improperly calculates the member agencies' preferential rights under Metropolitan Water District Act Section 135. The Court of Appeal summarily denied both the petition for rehearing and request for judicial notice on April 15, 2004. The Authority may still file a petition with the Supreme Court to review the Court of Appeal's opinion in the main case by May 4, 2004.

f. Shank/Balfour Beatty v. Metropolitan

Shank/Balfour Beatty and Metropolitan filed a joint application to the court for a short delay in the trial pending approval of a proposed partial settlement of the litigation. The proposed partial settlement would dispose of all claims from Shank/Balfour Beatty, IAFD and Coast Geo, as well as a claim for \$429,000 filed by SBB for alleged late payment of extra work orders on the Riverside Badlands Tunnel. There is no proposed settlement with the pipe vendor, Ameron, and its claims will still go to trial. The proposed partial settlement will go to the Legal, Claims and Personnel Committee on May 10 and to the full board on May 11.

May 11 was the date scheduled for trial. The court has agreed to delay the trial for two weeks until May 25. Assuming the partial settlement is approved, the length of the trial should be reduced from approximately 5 weeks to 2-3 weeks.

2. Other Matters Involving Metropolitan

a. Laub v. Davis; Regional Council of Rural Counties v. State of California

Earlier this year, Appellants California Farm Bureau, Regional Council of Rural Counties, and the Central and South Delta Water Agencies filed opening briefs with the Third Appellate District in their appeal of the lower court's decision upholding the CALFED EIR. Metropolitan is a party to these consolidated cases to protect our interests in a successful outcome of the CALFED process. Last month, Metropolitan filed its responding brief in defense of the EIR and the trial court's decision. Responding briefs were also filed by the State, the State Water Contractors, Westlands Water District, Glenn Colusa Irrigation District, and the San Joaquin River Group Authority. After Appellants have filed their final reply briefs, the court will schedule the appeal for argument.

b. Lower Colorado River Multi-Species Conservation Plan

Legal Department staff has provided advice and support in drafting the habitat conservation plan for the Lower Colorado River Multi-Species Conservation Program. This program represents an effort by the U. S. Department of the Interior and agencies within each of the Lower Basin States to achieve compliance with Endangered Species Act requirements for the operation of Colorado River facilities and deliveries and diversions of Colorado River water and power.

On April 16 the non-federal parties (applicants) submitted the habitat conservation plan and permit application to the Fish and Wildlife Service. The federal parties, including the Bureau of Reclamation, will formally submit a Biological Assessment based on the habitat conservation plan in mid-May. These documents are proposed as the basis for issuance of incidental take authorizations under the Endangered Species Act that cover a 50-year period and 27 species.

Negotiations for funding the program on a long-term basis are also ongoing. The Record of Decision for the program and issuance of permits is scheduled for December 2004. Further information may be obtained at the Web site for the Lower Colorado River Multi-Species Conservation Program maintained by the Colorado River Commission of Nevada.

<http://www.lcrmscp.org/>

c. QSA-Related Litigation

On April 5, the Imperial Group filed its sixth lawsuit on QSA-related matters, alleging the Imperial Irrigation District's (IID's) purchase of the Western Farms Property is invalid and naming Metropolitan as a defendant along with IID and others. This brings the total number of QSA-related cases filed to 12, with two now dismissed and one of these on appeal. On April 30, Metropolitan, San Diego County Water Authority, IID, Coachella Valley Water District and Imperial County successfully argued for coordination of nine of the QSA-related lawsuits before Sacramento County Superior Court rather than being heard in Imperial County. Previously the Imperial County Superior Court had ordered the transfer of five of the suits to Sacramento.

Because the April 5 lawsuit and another filed by the Imperial Group in March were brought after the motion to coordinate, they remain in Imperial County for the time being.

3. Administration

The Legal Department conducted a staff retreat and employee inspection tour of Metropolitan facilities on April 14 and 15. The staff visited the Inland Feeder construction site, Diamond Valley Lake, Intake Pumping Plant, Copper Basin, Parker Dam, and other sites of interest on the route to Gene Village. Staff members found the activities to be an ideal opportunity to learn more about Metropolitan's history, facilities and distribution system.