

• General Counsel's April 2005 Activity Report

Summary

This report discusses significant matters in which the Legal Department was involved during the month of April 2005.

Attachments

None.

Detailed Report

1. Litigation/Claims To Which Metropolitan Is A Party

a. Kern County Water Agency, et al. v. California Department of Water Resources

On April 5, 2005, a group of 14 State Water Project (SWP) contractors filed suit against the California Department of Water Resources (DWR) challenging the manner in which it allocates certain energy costs and revenues related to operation of the project. Among other things, these contractors allege that DWR has been and is failing to properly credit them with “all benefits” derived from the sale or other disposal of electrical energy generated at the Hyatt-Thermalito complex in Oroville, i.e., that they are being over-charged for SWP water. Plaintiffs are seeking damages for breach of contract, as well as declaratory relief related to future SWP charges. If successful, tens of millions of dollars in annual costs could be shifted from SWP contractors located north of the Tehachapi Mountains to SWP contractors located south of the Tehachapi Mountains and on the Central Coast.

Metropolitan strongly believes that Hyatt-Thermalito energy costs and revenues have been and are being allocated by DWR in a manner that is both legal and equitable. Metropolitan is part of a coalition with 12 other SWP contractors, which plans to intervene in the current litigation as real parties in interest to protect our interests in this matter.

b. McMaster v. Baddgor

Metropolitan is being sued as a cross-defendant in this wrongful death suit. Staff’s investigation into the Cross-complainant’s allegations indicate that Metropolitan had no role in the underlying incident. If the Cross-complainant does not voluntarily dismiss the action, we shall file a motion to dismiss and seek costs and fees.

d. QSA-Related Litigation

On March 30, 2005, the Third District Court of Appeal granted the County of Imperial’s petition for review by extraordinary writ of the Sacramento Superior Court’s January rulings and stayed all lower court proceedings pending appellate review. The Superior Court rulings at issue dismissed one County case entirely and the CEQA causes of action from another on the grounds that the County failed to name Metropolitan and the Coachella Valley Water District as indispensable parties. In April Metropolitan prepared and filed its response to the County’s arguments. Oral argument has yet to be scheduled.

2. Other Matters Involving Metropolitan

a. Coordinated Proceedings in re State Water Resources Control Board Decision 1641

The State Water Contractors (SWC) filed their Reply Brief in this coordinated appellate proceeding on April 25, 2005. The appeal is from the trial court's decision substantially upholding State Water Resources Control Board's (SWRCB) water rights Decision D-1641 that resolved a number of issues involved in implementation of SWRCB's 1995 Water Quality Control Plan for the Bay/Delta Estuary. The SWC have participated in this case since its inception because of its potential impact on State Water Project water supplies, for the most part defending D-1641.

b. El Dorado Irrigation District v. SWRCB and El Dorado County Water Agency v. SWRCB

The SWC filed their Reply Brief with the Third District Court of Appeal on April 25, 2005. This case is on SWRCB's appeal from the trial court's order to the SWRCB to delete its "Term 91" from El Dorado's water rights permits. Term 91 protects the State Water Project from diversions by senior water rights holders at times during the year when there is insufficient natural flow, absent the flows from the projects, to support diversions under these senior rights. The SWC intervened in this case because of its impact on SWP water supplies.

c. Northern California Water Association et al. v. SWRCB

The Sacramento Superior Court issued a "Tentative" Ruling on April 14, 2005 upholding State Water Resources Control Board's water rights fees adopted in 2003. SWRCB adopted the fees as required by SB 1049, which eliminated general funding for SWRCB's Division of Water Rights and directed SWRCB to charge water users to fund the Division's activities. The Court heard oral argument on this issue on April 15, 2005 and as of the date of this letter has not finalized its Tentative Ruling

3. Other Matters Not Involving Metropolitan

a. National Marine Fisheries Service Proposal to List the North American Green Sturgeon as threatened

The National Marine Fisheries Service (NMFS) published a proposal to list the Central Valley population of North American green sturgeon as threatened under the Federal Endangered Species Act on April 5, 2005. NMFS had previously determined that the green sturgeon did not qualify for listing in January 2003. However, in March 2004 in *Environmental Protection Information Center v. National Marine Fisheries Service* the San Francisco Federal District Court remanded that determination to NMFS to reconsider its decision. The Court upheld NMFS decision for the most part, but it held that NMFS did not adequately explain whether the fish was threatened in "a significant portion of its range." Upon reconsideration, NMFS now proposes to list the Central Valley population of green sturgeon and has asked for comments. The State Water Contractors, who participated in the first listing proceeding and the litigation, are preparing to file comments in response to NMFS' proposed listing.

b. Natural Resources Defense Council, et al. v. Norton, et al.

The SWC filed their motion to intervene in this case in the United States District Court in Oakland on April 25, 2005. Plaintiffs allege that the Biological Opinion and Incidental Take Statement issued by United States Fish and Wildlife Service on the United

States Bureau of Reclamation's operational plan for the Central Valley Project (CVP) violates the Federal Endangered Species Act. The Biological Opinion and Incidental Take Statement also include operations of the State Water Project (SWP), and give both the SWP and CVP protection against incidental take of the Delta smelt. Because of the potential impact on SWP operations and water supplies, the SWC seek to intervene to defend the opinion and incidental take statement.

4. Finances

Legal staff worked with outside bond counsel on several bond issues: (1) the documentation and execution of forward interest rate swap agreements to lock in today's interest rates for a revenue bond refunding transaction anticipated to close in April 2006, with anticipated net savings estimated at about \$425,000 a year from 2007 through 2021; (2) closing of the sale of Metropolitan's \$64,705,000 Waterworks General Obligation Refunding Bonds, 2005 Series A, on April 6, 2005; and (3) preparation of bond and disclosure documents for an anticipated revenue bond issue.

5. Administration

Assistant General Counsel Sydney Bennion appeared with Chief Financial Officer Brian Thomas on a panel discussing electronic dissemination and filing of municipal disclosure information at a conference hosted by the California Debt and Investment Advisory Commission and Fitch Ratings on April 7, 2005. They used examples from Metropolitan's Web site to illustrate ways that public agencies can better provide financial information.

Maria Gagar Downing was selected to fill the vacant Secretary to the Assistant General Counsel position. Maria has served as a legal secretary at Metropolitan for almost fifteen years and was previously a legal secretary for the California Attorney General's office.

During May, recruitment will commence for an attorney position to fill one of two vacancies resulting from recent attorney retirements. The department is seeking applicants with experience in natural resources law or litigation. In addition, a recruitment is planned to fill the vacant legal secretarial position resulting from the appointment of Ms. Gagar Downing to the Secretary to the Assistant General Counsel position.