

- General Counsel's April 2006 Activity Report

Summary

This report discusses significant matters in which the Legal Department was involved during the month of April 2006.

Attachments

None.

Detailed Report

1. Litigation/Claims To Which Metropolitan Is A Party

- a. *Alameda County Water District v. Sacramento Regional County Sanitation District; Contra Costa County Water District v. Sacramento Regional County Sanitation District*

Last June, Metropolitan, Alameda County Water District, Alameda County Flood Control and Water Conservation District Zone 7, Santa Clara Valley Water District, and the State Water Contractors filed a CEQA (California Environmental Quality Act) challenge to Sacramento Regional County Sanitation District's (SRCSD's) approval of a project to expand its wastewater treatment plant. The expansion will increase plant discharges to the Sacramento River by about 40 percent while providing only secondary treatment. A similar suit was filed by Contra Costa Water District and both cases were consolidated in Sacramento Superior Court before Judge Cadei. Earlier this year, SRCSD moved to dismiss the State Water Contractors for failing to object to the project during the public comment period. In April, Judge Cadei granted the motion. Although the entity State Water Contractors has been formally dismissed, the urban contractors that have been supporting the litigation will continue to do so through the remaining contractor parties, including Metropolitan.

- b. Electric Industry Restructuring

On April 10, Metropolitan filed comments at FERC on the California Independent System Operator's (CAISO) proposed market redesign, currently anticipated to commence November 2007. The redesign is intended to address a number of structural problems that became evident during California's energy crisis. Among other things, the redesign will establish a day-ahead energy market, price energy at the location where it is withdrawn from the transmission grid, and provide financial hedges against the anticipated cost of transmission congestion for load within the CAISO control area.

Metropolitan collaborated with State Water Project staff in developing our respective arguments, which focused on the proposed design's unique impact on Metropolitan and the SWP. We addressed identified problems with the design's scheduling, settlement and determination of losses for Transmission Ownership Rights (including Metropolitan's 230kV transmission line serving the Colorado River Aqueduct), problems with the design's treatment of Existing Transmission Contract rights, recommendations for demand response programs to facilitate State Water Project participation, and suggested changes in the allocation and use of the congestion hedges. Metropolitan and SWP staff are currently working on reply comments in which we will

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address some of the more general problems with the CAISO's proposed design. Reply comments are due May 16.

c. *Enron Power Marketing, Inc. v. Metropolitan*

Last month the Board approved settlement of the above matter commenced by Enron in U.S. Bankruptcy Court and related matters pending at the Federal Energy Regulatory Commission (FERC). Metropolitan legal staff worked with Enron's counsel to develop text to reflect the parties' settlement terms. Enron submitted the settlement to the U.S. Bankruptcy Court for approval last week. An Offer of Settlement was filed at FERC on April 25, for which opportunity for public comment will be provided. Metropolitan does not anticipate filing of adverse comments, since our settlement will have no impact on any other parties or proceedings. Enron and Metropolitan also submitted a joint motion to stay the pending FERC proceedings as to their dispute, to minimize attorneys' fees. Based upon prior submittals, we anticipate the bankruptcy court will issue an order approving the settlement in about one month; FERC approval is anticipated before the end of summer.

d. *Soboba Band of Mission Indians v. Metropolitan*

In June 2004, your board approved settlement of this case seeking remedies for the flow of groundwater into the San Jacinto tunnel. The major features of the settlement are that Eastern Municipal Water District and Lake Hemet Municipal Water District, via a groundwater management plan, will guarantee the tribe a first priority right to 9,000 acre-feet of water in the San Jacinto river basin. Eastern will also pay the Tribe \$17 million in cash, services and other consideration. The United States will pay the Tribe a total of \$21 million.

Metropolitan will not contribute money to the settlement. Metropolitan will enter into a water supply contract with Eastern wherein Metropolitan will furnish Eastern 7,500 acre feet of water a year on average at its seasonal storage rate. This water, to go into the groundwater basin, will be supplied under terms identical to Metropolitan's seasonal storage program, except that Eastern may take the water from the basin in the same year that it is put in. Metropolitan need only meet the 7,500 acre feet goal on a 15 year average and may pre-deliver up to 40,000 acre feet. This water supply contract will expire in 2035, although the parties have agreed to consider an additional 15 years depending on the status of the State Water Project contract and other factors.

Metropolitan will also transfer approximately 20 acres of land it owns near Diamond Valley Lake to the Tribe. This land is contiguous to 80 acres of land owned by Eastern that will also be transferred to the Tribe. Metropolitan acquired this property for the construction of Domenigoni Parkway, part of the Diamond Valley Lake environmental mitigation.

Since approval of the settlement by Metropolitan and the other parties, the Sobobas have attempted to secure local support for the requisite federal authorizing legislation for the settlement that would include the allowance of gaming on the property the Sobobas are to acquire from Eastern and Metropolitan. Local congressional representatives made their support of the legislation contingent upon the Sobobas securing the support of the local municipalities and Riverside County. The Sobobas have thus far been unsuccessful on securing the local support and have decided to move forward with the settlement irrespective of their ability to conduct gaming operations on the property.

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Therefore, presuming the Office of Management and Budget approves the settlement provisions, authorizing legislation will be introduced in Congress probably by late summer. Once this legislation is passed, Metropolitan and the other parties will execute the settlement agreement and the stipulated judgment, finally bringing an end to this decades-long dispute.

2. **Other Matters Involving Metropolitan**

a. State of California Solar Cup Service Mark

On March 28, 2006 Metropolitan obtained the State of California's registration of a service trademark for the Solar Cup program. The service mark protects Metropolitan's use of the Solar Cup name in California in connection with Metropolitan's high school solar boat-building, competition and program.

3. **Matters of Interest Not Involving Metropolitan**

a. National Marine Fisheries Service Decision to List the North American Green Sturgeon as Threatened

The National Marine Fisheries Service (NMFS) determined to list the North American green sturgeon as a threatened species under the Federal Endangered Species Act on April 7, 2006. The green sturgeon are found in the Sacramento and Feather Rivers. Existing regulatory requirements in place for other listed species also benefit the green sturgeon, but this listing could have some impact on SWP operations.

b. Natural Resources Defense Council v. Gale Norton, U.S. Department of the Interior

The Ninth Circuit Court of Appeals reversed the federal district court on April 19, 2006 and directed that the State Water Contractors (SWC) be allowed to intervene in this case. Plaintiffs allege that United States Fish and Wildlife Service's biological opinion regarding Central Valley Project operations is inadequate. Because the biological opinion also analyzes State Water Project operations, and provides both projects with incidental take permits and operational stability, the SWC sought to intervene to protect the biological opinion, but was denied by the district court. With the Ninth Circuit's ruling, SWC may now participate as a full party in the litigation.

4. **Finances**

The Legal Department provided legal support for the pending sale of approximately \$75 million Water Revenue Refunding Bonds, 2006 Series A-1 and A-2. The Legal Department worked with Finance staff and the Group Managers to prepare a comprehensive update of Appendix A to the Official Statement, which describes relevant information about Metropolitan. It is being circulated to the Board for review.