



## Metropolitan Cases

### ***Watershed Enforcers, a project of California Sportsfishing Protection Alliance v. California Department of Water Resources, et al.***

On March 22, 2007, the Alameda County Superior Court issued its Proposed Statement of Decision in this case. The draft decision finds that the Department of Water Resources (DWR) is illegally “taking” listed fish through operation of the State Water Project (SWP) export facilities, and orders DWR to “cease and desist from further operation” of the those facilities within 60 days unless it obtains take authorization from the Department of Fish and Game (DFG).

Plaintiffs allege in this case that DWR has not obtained a formal incidental take authorization from DFG regarding take of species listed under the California Endangered Species Act (CESA). DWR has not obtained such an authorization through the formal process for obtaining a take authorization enacted in 1997. Instead, DWR believes it has take authorization under a companion provision of CESA enacted at the same time authorizing “grandfathered” incidental take under agreements with DFG signed before the 1997 enactment of these provisions. DWR and DFG are parties to several such agreements.

The trial court noted that the agreements “certainly demonstrate the fact that DWR was and has been attentive to the issue of incidental take.” The SWP has, in fact, been operated to minimize and mitigate for incidental take since the early 1990s under biological opinions and incidental take authorizations issued by the National Marine Fisheries Service and the United States Fish and Wildlife Service under the Federal Endangered Species Act. In the trial judge’s opinion, however, the pre-existing agreements DWR relies on are not specific enough regarding the take of listed species to qualify for grandfathered take authorization under CESA. Therefore, the court ordered DWR to obtain a formal incidental take authorization.

The order is not final at this time. Defendants have 15 days to review and file objections to the proposed final judgment before the court signs it. Metropolitan staff is analyzing the possible near term ramifications for Metropolitan’s SWP supplies

and its options for mitigating any reduction of SWP supplies that may result from the litigation. Staff also is working with DWR and the State Water Contractors on options available to respond to the court’s ruling and options for obtaining CESA take authorization.

### ***Protect Our Water and Environmental Rights (POWER) v. Imperial Irrigation District (POWER II) (Sacramento Federal District Court)***

This is a lawsuit filed by an environmental organization, Protect Our Water and Environmental Rights (POWER), that challenges the All-American Canal (AAC) Lining Project. In January 2007, the federal district court in Sacramento dismissed the POWER II lawsuit because the lawsuit raised only state law claims that a federal court lacks jurisdiction to decide. The time to appeal the judgment of dismissal expired in March 2007. Therefore, the POWER II case has been concluded. However, the POWER I and III cases that were filed in state court, also challenging the AAC Lining Project, remain active.

### ***QSA Related Litigation (California Court of Appeals)***

The Court of Appeal heard oral argument on the County of Imperial’s (County) writ petition in the Colorado River Quantification Settlement Agreement cases on March 21, 2007. At issue was whether the trial court was correct in dismissing the County’s claims in some of the QSA cases. The County had challenged both the State Water Resources Control Board’s approval of Imperial Irrigation District’s transfers of water under the QSA and the environmental impact report for the transfers. The trial court ruled that because Metropolitan and Coachella Valley Water District (CVWD) would receive transferred water from IID, those water agencies had to be named as parties in the County’s lawsuits which sought to overturn regulatory approvals for these water transfers. However, because the statute of limitations for joining Metropolitan and CVWD had expired, the County could no longer join Metropolitan and CVWD in the lawsuits, therefore, the only option was to dismiss the County’s claims that threatened the interests of Metropolitan and CVWD.



After hearing arguments, the Court of Appeal took the matter under submission, and is expected to issue a ruling within 90 days. This writ proceeding involved only a portion of the QSA cases and claims. Trial court proceedings on the other (and larger) portion of the QSA litigation was stayed in 2005 while the writ proceeding was pending in the Court of Appeal. After the Court of Appeal rules in the writ proceeding, we expect that the stay will be lifted, and further proceedings in the trial court in the QSA cases will resume.

***Lance A. Charles, Sr. v. The Metropolitan Water District of Southern California, et al.***

At a conference on March 21, 2007, Judge Rolf M. Treu set this case for trial on September 17, 2007. A recent mediation before Edward A. Panelli, a retired Associate Justice of the California Supreme Court, did not result in a settlement.

**Electric Industry Restructuring**

Metropolitan, the State Water Project, and other California publicly owned electric utilities (POUs) received welcome news on March 7 when the Ninth Circuit issued an order denying rehearing and rehearing en banc (to the entire panel) of the *Bonneville Power Administration (BPA) v. FERC* decision (422 F.3d 908 (2005)). This is the case in which the Ninth Circuit earlier found that FERC (Federal Energy Regulatory Commission) exceeded its Federal Power Act authority when it subjected public power sales (including those by State Water Project and Metropolitan) to the California Independent System Operator and the California Power Exchange during California's energy crisis to refund liability. Metropolitan anticipates that California's investor-owned utilities and the California Attorney General will seek U.S. Supreme Court review of this decision.

California's POUs received more good news this month when U.S. District Court Judge Morrison England granted their motions to dismiss complaints filed last year by the investor-owned utilities and the California Electricity Oversight Board for lack of federal subject matter jurisdiction in *San Diego Gas & Electric Co. v. Arizona Electric Cooperative, Inc., et al., No. 2:06-cv-00592-MCE-KJM* (E.D. Cal). Those complaints were filed as a result of an observation by the Ninth Circuit in *BPA* that its decision did not preclude potential POU refund liability under a breach of contract theory. POUs anticipate the investor-owned utilities will seek review of Judge England's decision and file breach of contract actions in California Superior Court in Sacramento County. SWP was not

named in the investor-owned utilities' federal complaint due to an existing tolling agreement with the IOUs. If the investor-owned utilities elect to pursue a breach of contract complaint against SWP, it would likely be affected by the disposition of prior litigation against the POUs.

***AFSCME Local 1902 v. Metropolitan (Public Employment Relations Board)***

On March 22, 2007, AFSCME lodged an unfair practice charge with the Public Employment Relations Board (PERB). The charge requests an order requiring the District to rescind an amendment made to Metropolitan's Administrative Code on October 10, 2006. That amendment was done to conform the Administrative Code to legislation amending the Meyers-Milias-Brown Act, which placed unfair practice charges at local public agencies (including Metropolitan) under the initial and exclusive jurisdiction of PERB. PERB is a quasi-judicial administrative agency charged with administering unfair practice charges covering employees amongst other public agencies (of Metropolitan). Metropolitan's position statement is due on April 16. The Legal Department will defend against the charge, including seeking a dismissal.

***AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)***

In March 2004, AFSCME Local 1902 filed three grievances alleging that certain employees classified as Maintenance Mechanic I (MMIs) are entitled to additional compensation for higher level duties based on their use of P-Cards to make purchases of small equipment and/or materials, their creation of work orders in the Maximo computer system, and their planning and execution of shutdowns. The District responded that the use of P-Cards and creation of work orders in the Maximo computer system neither constituted higher level duties, nor entitled the MMIs to higher level compensation. The District also contended that, although the MMIs' involvement in certain aspects of shutdowns entitled the MMIs to the "lead pay" they received pursuant to the MOU, such work did not qualify them for a temporary promotion to a higher classification. The grievances were denied and Hearing Officer Walter Daugherty was selected to preside over a hearing scheduled for March 8, 2007. AFSCME Local 1902 withdrew the grievances with prejudice on March 6, with the understanding that appropriate job duties for these classifications will be discussed in connection with the finalization of the ongoing O&M Technician Study. The parties agreed to split



the hearing officer's cancellation fee.

## Matters Involving Metropolitan

### Center for Water Education – Interim Status Report

Since the Board took action at its February 13, 2007 meeting, the Center for Water Education (CWE) ground lease has been terminated as directed by the Board and Metropolitan has taken possession of the facility. Metropolitan staff met with CWE representatives and with representatives of the State Parks Office of Grants and Local Services, the administrator of the state recreational grant funding programs, in an effort to resolve some of the outstanding issues, including obtaining the remainder of the State Grant funds to pay CWE construction debts. A draft Memorandum of Understanding is being negotiated with CWE to provide an orderly process for implementing the remaining activities authorized by the Board. Finally, staff has worked diligently to contact those groups and organizations that had scheduled events or tours at the center to notify them of the

change in management and to redirect them, where possible, to other resources.

### Colorado River Interim Shortage Guidelines

In March, the General Counsel participated in a negotiation session in Las Vegas among principals of the seven Basin states to seek closure on a package of measures to address operations of the Colorado River system over the next 20 years. Issues include: shortage sharing between Arizona and Nevada and protection of Metropolitan's senior water rights, favorable terms for Lake Mead storage and recovery, extension of Metropolitan's access to surplus deliveries, and new coordinated operations between reservoirs in the Upper and Lower Basins. The Legal Department will continue to assist in evaluating proposed new federal guidelines and federal water delivery agreements. A final decision by the U.S. Bureau of Reclamation is expected in December 2007.

## Finances

Legal staff prepared and closed an amendment to the standby bond purchase agreement supporting Metropolitan's Water Revenue Bonds, 1999 Authorization, Series B and C. The amendment extended the expiration date of the agreement from May 1, 2007 to May 2012 and lowered the quarterly commitment fees payable by Metropolitan.

## Items of Interest

The Legal Department assisted the General Manager's office in negotiating and finalizing the salvage sale of a damaged Metropolitan aircraft. The Cessna 337 was damaged in a July 12, 2006 incident involving landing gear failure at Brackett Field.

A comprehensive seminar on electronic discovery was provided to the Legal Department and Corporate Resources staff by a legal consultant who specializes in this rapidly growing and important field. The training, which qualified for continuing legal education credit for attorneys and paralegals, provided excellent information and resource materials and was provided to Metropolitan without charge.