



Metropolitan Cases

Watershed Enforcers, a project of California Sportsfishing Alliance v. California Department of Water Resources, et al. (Alameda County Superior Court)

The Alameda County Superior Court finalized its Statement of Decision in this litigation on April 18, 2007, finding that the Department of Water Resources (DWR) does not have an incidental take authorization under the California Endangered Species Act (CESA) and directing DWR to stop operating State Water Project export facilities within 60 days unless it obtains a take authorization from the Department of Fish and Game (DFG). The 60 days began running on April 18.

On April 9, 2007 DWR began the process for obtaining take authorization through a “consistency determination” under Fish and Game Code Section 2080.1. That statute authorizes DFG to determine whether an existing incidental take authorization for SWP operations under the Federal Endangered Species Act meets the criteria under CESA. (Two existing take authorizations currently exist. See the report on *Natural Resources Defense Council v. Kempthorne* below.) If DFG determines within 30 days that the FESA take authorization is consistent with CESA, DWR will have obtained take authorization under CESA. As of the date of this letter, DFG has not responded to DWR’s request.

DWR, supported by the State Water Contractors, has filed a motion to confirm that the trial court’s final decision will be stayed beyond the 60-day period if DWR is forced to appeal the trial court’s decision based on a denial by DFG of the consistency determination. A hearing on that motion is scheduled for May 15, after the 30-day time limit on DFG’s consistency determination has expired.

Dewayne Cargill, et al. v. Metropolitan (Los Angeles County Superior Court)

In February 2007, the Board approved the terms of a settlement of the PERS liability portion of the *Cargill* matter. On April 18, the full CalPERS Board approved that settlement agreement. The parties have therefore reached a binding resolution of the matter and will now move forward with

implementation. A final settlement document will be presented to the trial judge for approval. As authorized by the Board, the key terms of the settlement provide for a claims-made process, shared costs for CalPERS coverage (with participants paying 25 percent of the employee’s share for pre 2001 participation), the waiver of certain administrative fees, offsets for vested interests in retirement savings or plans, and Metropolitan’s reservation of rights to challenge the status of certain sub-classes of temporary workers. The amount payable for plaintiffs’ attorneys fees has not yet been settled. This is the final issue in the *Cargill* matter.

The *Cargill* litigation involves three consolidated class action lawsuits challenging Metropolitan’s use of District temporary employees, independent consultants and temporary agency workers. The three lawsuits, filed in 1998, seek regular employment status and full retroactive employee benefits for approximately 4,550 temporary workers. In October 2005, the Board authorized the settlement of the non-pension benefits claims.

Protect Our Water and Environmental Rights (POWER) v. Imperial Irrigation District (POWER III) (Imperial County Superior Court)

In this state court suit challenging the All-American Canal Lining Project, petitioner POWER filed an amended petition just days before the April 27, 2007 hearing on the demurrers by Imperial Irrigation District (IID) and Metropolitan to POWER’s petition. In light of the amended petition, the Superior Court vacated the hearing on the demurrers, which had challenged the earlier petition of POWER. IID and Metropolitan intend to promptly refile demurrers to POWER’s new amended petition.

Metropolitan v. Firooz (Riverside County Superior Court)

On April 3, 2007, Legal Department staff successfully settled a right-of-way dispute that arose out of the construction of the north reach of San Diego Pipeline No. 6. *Metropolitan Water District of Southern California v. Firooz*, filed in May 2006, was an eminent domain action brought by Metropolitan to resolve the conflict over the



value of a temporary construction easement over defendants' property. The amount of defendants' just compensation was the sole remaining issue in the litigation. Defendants originally sought over \$100,000 for the temporary construction easement. The parties ultimately settled for \$73,000 which was within 10 percent of the appraised value of the easement and thus within the General Counsel's authority to settle. The Legal Department handled this matter internally without retaining outside counsel.

Kiewit Pacific Co. v. Manufacturing Automation Solutions, Inc. (Orange County Superior Court)

On April 20, 2007, Metropolitan was served with a Cross-complaint and Summons by Cross-complainant Manufacturing Automation Solutions (MAS). The MAS Cross-complaint alleges implied indemnity, apportionment of fault, declaratory relief, breach of contract and negligence. Pursuant to a previous settlement agreement between Metropolitan and the plaintiff, Kiewit Pacific Co. (Kiewit), Kiewit is required to defend and indemnify Metropolitan in this matter. After service of the Cross-complaint, Metropolitan tendered the defense of the case to Kiewit and Kiewit accepted the defense. Kiewit was the prime contractor to Metropolitan for the OC-88 Energy Savings Modification project and MAS was a subcontractor to Kiewit.

Los Angeles Unified School District v. The County of Los Angeles, et al. (Los Angeles County Superior Court)

Metropolitan was named as a "real party in interest", along with other Los Angeles County taxing agencies, in an action filed by the Los Angeles Unified School District against the County of Los Angeles, the County Auditor-Controller and the redevelopment agencies within the County. The complaint contends that the Auditor-Controller miscalculated payments to taxing agencies made to mitigate their transfers to the Educational Revenue Augmentation Fund, and that this erroneously reduced the taxes transferred to LAUSD since 1994. LAUSD seeks payment of the amounts withheld. Metropolitan levies only special taxes for voter-approved indebtedness and is not required to transfer property taxes to the Educational Revenue Augmentation Fund;

therefore Metropolitan's tax levy should not be affected. Legal Department staff will seek Metropolitan's dismissal from this litigation.

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

On February 15, 2007, AFSCME Local 1902 lodged an unfair practice charge with the Public Employment Relations Board. The charge requested an order requiring the District to rescind any dress code requirement. In addition, the charge sought to rescind a disciplinary action administered to an employee for misconduct during a meeting at which a dress code requirement for Board meetings was mandated. On April 11 Metropolitan and Local 1902 negotiated a settlement and Local 1902 withdrew the charge with prejudice. The settlement continues the current parameters for dress at Union Station until a successor policy is negotiated. Thus, employees represented by Local 1902 working at Union Station can, at the employees' option, dress in either a "Business Dress" or "Business Casual Dress" style except during meetings involving the MWD Board, the public or other agencies. For such meetings, the "Business Dress" style will continue to be utilized as appropriate. The settlement also reduced the level of discipline administered to the employee.

AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)

In July 2004 and in February 2005, AFSCME Local 1902 lodged four grievances that eventually were consolidated into a joint hearing officer appeal. The grievances alleged that certain employees classified as Maintenance Mechanic I performed the duties of a higher classification, without receiving temporary promotion compensation. The District responded that the job duties at issue fell within the scope of duties properly assigned to a Maintenance Mechanic 1. The District's response also reaffirmed job audit results issued by the Human Resources Section during 2003. Management denied the grievances and Hearing Officer Walter Daugherty was selected to preside over a hearing scheduled for April 11, 2007. On April 2, AFSCME Local 1902 withdrew its appeal and paid the hearing officer's cancellation fee.



Matters Involving Metropolitan

Center for Water Education Status Report

Following the April report to the L&HR Committee on the status of Center for Water Education (CWE) activities, the following have occurred:

On April 16, 2007, a letter was received from the California State Parks Office of Grants and Local Services (OGALS) regarding the status of the education center. The letter requested a copy of the agreement between Metropolitan and the entity selected to assume the responsibility for the center and a copy of Metropolitan's project completion timeline. The letter incorrectly assumes that Metropolitan has assumed CWE's responsibilities under the grant and states that should Metropolitan not provide the requested documents, OGALS may require Metropolitan to repay the \$4.5 million grant received by the CWE. Metropolitan has requested a meeting with the Chief of the Office of Grants and Local Services and is preparing a formal response to the letter.

Metropolitan and CWE have entered into an MOU committing Metropolitan to assist CWE in assessing the amount of its debt and have also negotiated an amendment to the MOU that would provide for Metropolitan to pay the Valley Crest Landscape Development claim in order to proceed with completion of construction. The MOU, as amended, explicitly states that no other CWE

commitments or obligations have been assumed by Metropolitan.

The CWE Board met April 13 and May 1 and approved the terms of the MOU described above and the proposed amendment. The CWE continues to cooperate with Metropolitan in gathering information about the extent of its debt.

Investigation into Damage to Rialto Pipeline

As reported to the Board last month, a February 2007 inspection of the Rialto Pipeline identified one pipe segment with up to 85 pre-stressed wire breaks concentrated at one end of the pipe. The previous inspection conducted in 2004 did not reveal any wire breaks in this pipe segment, suggesting that damage may have occurred from unrelated construction activities over the pipeline. The damaged segment is located along a residential street in the city of Rancho Cucamonga. During repairs to this segment last month, which are estimated to cost \$1.3 million, Metropolitan's preliminary forensic investigation confirmed that at least 15 wires were broken due to third party damage to the pipeline. The Legal Department is working with the Risk Management Unit to research the possible causes of this damage. This investigation is underway, and a further report will be provided next month.

Cases to Watch

Natural Resources Defense Council v. Secretary of the Interior Kempthorne (Norton) **(U.S. District Court)**

On April 26, 2007, a hearing was held on the plaintiff's motion for summary judgment in this federal lawsuit challenging the Biological Opinion (BO) for the delta smelt that was prepared under the federal Endangered Species Act for the Operating Criteria and Plan (OCAP) for the coordinated operation of the Central Valley Project (CVP) and State Water Project (SWP). The hearing lasted 4 hours. Federal District Judge Wanger stated that he would rule on the matter as soon as possible. Judge Wanger indicated that he would conduct further proceedings on what remedial action should be taken if he rules that the BO is invalid. The BO for the delta smelt that is being challenged in this lawsuit is the same BO

that the Department of Water Resources is relying on in its April 9, 2007 request to the Department of Fish & Game for a consistency determination under the California Endangered Species Act (CESA) for the *Watershed Enforcers v. DWR* lawsuit (see page 1).

California Farm Bureau Federation, et al. v. California State Water Resources Control Board

The California Supreme Court agreed on April 11, 2007 to the State Water Resources Control Board's (SWRCB) request that it review the Third District Court of Appeal decision in this case invalidating portions of water user fee regulations adopted by SWRCB. The Court of Appeal had held that while the statute under which SWRCB adopted the fees is valid on its face, the fee regulations are invalid as applied.



Center for Biological Diversity Notice of Intent to Sue National Marine Fisheries Service for Alleged Failure to Designate Critical Habitat for the Green Sturgeon

The environmental organization Center for Biological Diversity notified the National Marine Fisheries Service (NMFS) of its intent to sue NMFS for its purported failure to designate critical habitat for the green sturgeon on April 7, 2007. NMFS listed the green sturgeon as a threatened species under the Federal Endangered Species Act (FESA) in April 2006. FESA directs NMFS to designate critical habitat for a listed species at the same time as the listing decision. However, if NMFS determines that critical habitat is not

determinable at the time the species is listed it may extend the period for designation for one year, in this case to April 2007. NMFS extended the designation for the additional year, but has been unable to designate habitat within that year. Under FESA, before litigation may be filed against NMFS under the citizen's suit provision, a potential plaintiff must provide NMFS with a notice of its intent to sue, giving NMFS the opportunity to correct the alleged violation. With the submission of the April 7, 2007 notice, Center for Biological Diversity will be able to sue NMFS at any time after June 6, 2007.

Items of Interest

Legal Department staff updated Appendix A to the Official Statement for Metropolitan's bonds and provided it to the Board for review. Appendix A describes information about Metropolitan that would be of interest to potential bondholders. Metropolitan's Water Revenue Bonds, 2006 Authorization, Series A are expected to be priced in May.