



## Metropolitan Cases

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

The writ proceeding in the Court of Appeal in the Colorado River Quantification Settlement Agreement cases, which began in early 2005 and resulted in a stay of all trial court proceedings, has finally ended. That writ proceeding resulted in the dismissal of some (but not all) of the challenges to the QSA asserted by the County of Imperial. The Sacramento Superior Court then held a lengthy case management conference on September 14, 2007 to map out the schedule of future court proceedings in the next four months. The court set various deadlines for further pleading challenges, motions for a preliminary injunction against implementation of the QSA, motions to disqualify counsel, and filing of administrative records and answers to writ petitions. The court deferred setting any schedule for a class certification schedule or for discovery plans at this time. (See the General Counsel's August 2007 Activity Report)

### ***Metropolitan v. Campus Crusade for Christ*** **(California Supreme Court)**

On September 12, the California Supreme Court denied, without comment, Metropolitan's petition for rehearing and/or modification of the decision in this case. The petition asked the court to address an issue on admissibility of evidence related to the reasonability of future zoning change that had not been addressed in the court's opinion handed down in July.

This eminent domain case was brought by Metropolitan in 1997 to acquire property for the Inland Feeder Project. Metropolitan won a favorable judgment after a court trial, and Campus Crusade appealed. (A more detailed discussion of the facts of the case can be found in the General Counsel's May 2007 Activity Report). After the Fourth District Court of Appeal reversed the judgment on several grounds, Metropolitan requested that the California Supreme Court review the case. The Supreme Court upheld the portion of the appellate court's decision holding that the trial court had improperly decided issues of severance damage and reasonable probability of a

zoning change, which should have been presented to a jury. However, the Supreme Court reversed the appellate court's ruling that Campus Crusade had offered sufficient evidence of damage due to interference with use of the property. (For a full discussion of the Supreme Court's ruling, see the General Counsel's July 2007 Activity Report).

The decision of the Supreme Court did not address an issue raised by Metropolitan as to whether the reasonability of a zoning change must be proved by objective evidence rather than general statements of support by government officials. On August 6, Metropolitan filed a petition asking the court to grant a rehearing to address this issue, or to modify its opinion to provide an answer. The Supreme Court's denial of the petition makes its decision final and the case will be remanded for a retrial.

The Legal Department's staff is working with outside counsel to identify the issues that will be retried, the experts required to present Metropolitan's position on those issues, and a budget for the cost of retrial. A detailed presentation will be provided at the November meeting of the Legal and Human Resources Committee.

### ***Victor Alan Gordon v. Metropolitan, et al.*** **(Los Angeles Superior Court)**

Metropolitan employee Victor Gordon filed his original Complaint in the Los Angeles Superior Court on September 21, 2006. In response to Metropolitan's Motion to Strike, Gordon filed a First Amended Complaint on December 6, 2006. The First Amended Complaint names Metropolitan and four individual employees as defendants.

Gordon alleges causes of action including race/national origin/ancestry discrimination and harassment in violation of Fair Employment and Housing Act ("FEHA"); race/national origin/ancestry discrimination and harassment in violation of public policy; retaliation for opposing harassment in violation of FEHA; retaliation for opposing harassment in violation of public policy; failure to take all reasonable steps to prevent discrimination and harassment in violation of FEHA; assault; battery; defamation; and



intentional infliction of emotional distress. The first two causes of action are alleged against Metropolitan only, and the remaining causes of action are alleged against all defendants.

On September 21, 2007, Judge William Highberger granted Metropolitan's motion for summary adjudication as to Gordon's five remaining tort causes of action. Several months before the motion, Gordon voluntarily dismissed the other tort causes of action for intentional infliction of emotional distress. Thus, only the three statutory causes of action based on the Fair Employment and Housing Act remain. Metropolitan's motion was based on the fact that the tort causes of action were not preceded by a claim pursuant to the California Government Code. Trial in this matter is currently scheduled for January 21, 2008. Metropolitan's summary judgment motion, directed to the remaining three causes of action, will be heard on December 21, 2007. (For further background of the case, please see July 10, 2007 Board Letter 8-7)

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

On September 7, 2007, AFSCME lodged eleven unfair practice charges with the Public Employment Relations Board (PERB). The charges challenge job announcements issued during 2006 for the following classifications: Administrative Assistant II, Aqueduct System Dispatcher, Drafter II, Engineer, Junior Microbiologist, Maintenance Mechanic I, and Maintenance Worker II. The charges allege that Metropolitan unilaterally modified these classifications by including "new" job requirements without providing AFSCME with prior notice and the opportunity to meet and confer. The challenged job requirements include items such as: (1) requiring auto mechanics classified as Maintenance Mechanic I to purchase materials through Metropolitan's procurement system; (2) requiring Drafter II to have the ability to operate software such as Microsoft Word and Excel; (3) requiring Engineers to administer contracts including geotechnical consultant contracts; (4) requiring Maintenance Workers II to perform field analysis; and (5) requiring Administrative Assistant II to engage in accounting and contract-tracking activities. Metropolitan disputes these charges, and will seek a dismissal. Metropolitan's response to PERB is due on October 17.

## Cases to Watch

### **Designation of Critical Habitat for Green Sturgeon**

As a result of settlement of litigation brought by the Center for Biological Diversity, the United States Fish and Wildlife Service (USFWS) has agreed to designate critical habitat for the green sturgeon by April 30, 2008. USFWS listed the green sturgeon, which inhabits the Bay/Delta and its watershed, as a threatened species in June 2006. Under the Endangered Species Act NMFS was required to designate critical habitat for the species within one year from its listing. However, primarily because of resource constraints USFWS often does not designate habitat within that timeframe and did not do so for the green sturgeon. The Center for Biological Diversity brought this litigation successfully alleging that USFWS had failed to designate habitat for several species throughout the country, including the green sturgeon. It is not known whether the designation of habitat will have any impact on State Water Project operations or supply.

### **Endangered Species Claims re Glen Canyon Dam Operations**

On September 12, the Grand Canyon Trust notified the U.S. Department of the Interior of its intent to sue for alleged violations of the federal Endangered Species Act. The Trust claims that the Bureau of Reclamation has failed to implement a reasonable and prudent alternative in the U.S. Fish and Wildlife Service's 1994 Biological Opinion for Glen Canyon Dam operations for the protection of endangered humpback chub and razorback sucker. The Trust alleges that Reclamation must develop and implement a water release program for seasonally adjusted flows, meaning steady high flows in the spring and low steady flows in the summer and fall during low water years (when Lake Powell makes the "minimum objective release" of 8.23 million acre-feet).

This case is related to the Center for Biological Diversity's litigation against Reclamation on Glen Canyon Dam Operations. That case, which alleged violations of the National Environmental



Policy Act, resulted in a settlement agreement providing for modifications to the Environmental Impact Statement and conditional consultation with the Fish and Wildlife Service over species impacts of modified Glen Canyon operations. (For further information on the *Center for Biological Diversity v. US. Bureau of Reclamation* case, please see the General Counsel's June and August 2006 Activity Reports) The Legal Department has been in contact with other water agencies within the Lower Basin and will evaluate options for participating in this litigation.

#### **High-Efficiency Residential Clothes Washers**

The California Energy Commission (CEC) has appealed the U.S. Dept. of Energy's (USDOE)

denial of California's petition for waiver from federal preemption to allow California to implement regulations requiring all California-sold residential clothes washers to meet more stringent water efficiency standards. In 2002, the Board expressed support for state legislation requiring increases to clothes washer efficiency standards. Pursuant to federal law, the Circuit Court of Appeals hears appeals of USDOE's preemption determinations. On October 1, 2007 Metropolitan submitted a letter to the Ninth Circuit Court of Appeals to express support for the California standards and to emphasize the importance of water conservation in meeting Metropolitan's Integrated Resources Plan goals.

## **Finance**

Legal Department attorneys updated Appendix A to Metropolitan's bond disclosure for the anticipated sale of Water Revenue Refunding Bonds, 2007 Series B. The most recent draft of Appendix A will be provided to the Board for review and discussed at the October meeting of the Business and Finance Committee.