



## Metropolitan Cases

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

In this litigation challenging the Quantification Settlement Agreements, Metropolitan filed its opposition to the plaintiffs' request for a preliminary injunction on December 21, 2007. Metropolitan's opposition urges that the request for a preliminary injunction be denied because the QSA transfers that will occur between now and the likely time of trial next year are too small to have any significant environmental or other effects that warrant injunctive relief before trial. Metropolitan's opposition also contends that the plaintiffs had failed to show that any irreparable injury would occur in that time period. The other water agencies also filed opposition to the preliminary injunctive request. A hearing on the motion is set for January 31, 2007 in Sacramento Superior Court. (See General Counsel's September 2007 Activity Report)

### ***Orange County Water District v. Northrop Corporation, et al.*** (Orange County Superior Court)

Northrop Corporation's motion to amend its cross-complaint in order to name Metropolitan and a number of other cross-defendants was granted December 21, 2007. The motion comes in a case originally filed by the Orange County Water District against Northrop Corporation, Aerojet Corporation, and a number of other industrial defendants seeking cleanup costs and damages related to VOC contamination of OCWD's groundwater resources. Northrop argued that other contaminants, including perchlorate, must be considered in assessing groundwater damages and that the importation and spreading of Colorado River water is a contributing factor to the overall basin contamination. In granting the motion, Judge Thierry Colaw gave Northrop until December 31 to file its amended cross-complaint and 30 days to serve it on all of the cross-defendants. We anticipate that Metropolitan will be served in early January with a response due in February. The draft cross-complaint seeks indemnity from OCWD, MWD and other cross-defendants and contains a specific nuisance cause of action against OCWD and Metropolitan.

## Matters Involving Metropolitan

### **New Guidelines for Colorado River Operations, Shortage Allocations and Lake Mead Storage**

On December 13, Secretary of the Interior Dirk Kempthorne and the Governors' Representatives for the Seven Basin States executed documents formalizing new operating criteria for Lakes Powell and Mead, allocations of shortages within the Lower Basin, and projects for storing water in Lake Mead. Secretary Kempthorne described the agreement as the most significant pact on the Colorado River since the 1922 Compact. The Legal Department has been providing legal counsel and negotiation support since discussions on these proposals began over two years ago. The Legal Department assisted in negotiating and developing several related agreements, including a Forbearance Agreement to waive other parties'

potential claims to Metropolitan's Lake Mead storage water and a Delivery Agreement with the Bureau of Reclamation to secure recovery of water that Metropolitan has stored or will store in Lake Mead. The Legal Department also assisted in developing an agreement for sharing of Lake Mead storage between Metropolitan and the Imperial Irrigation District. (See General Counsel's March 2007 Activity Report)

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

In this case involving the effects of the State Water Project and Central Valley Project on the Delta smelt, the district court issued its final Interim Remedial Order and its Findings of Fact and



Conclusions of Law on December 14, 2007. The Interim Remedial Order specifies criteria for operation of the projects while a new Biological Opinion is prepared on the effects of the projects on the Delta smelt. The Interim Remedial Order is generally consistent with the court's oral ruling on an interim remedy at the conclusion of the evidentiary hearing on August 31, 2007. The Interim Remedial Order specifies certain project pumping limitations, Delta smelt survey and monitoring requirements, and operations requirements for agricultural barriers in the Delta channels. These interim criteria are designed to minimize the take of Delta smelt at the project pumps. The Interim Remedial Order also directs the Federal Government to complete the new Delta smelt Biological Opinion by September 15, 2008. (See General Counsel's October 2007 Activity Report)

#### Center for Water Education Status

On December 17 the Center for Water Education ("CWE") received the remaining \$500,000.00 of grant funds from the State Office of Local Grants and Services. The CWE used the funds to pay off the remaining principal and some interest on the outstanding Mission Oaks bank loan. The final settlement agreement with Mission Oaks included complete releases of the CWE and Metropolitan board, board members and staff and Mission Oaks will immediately dismiss the lawsuit it filed earlier this year. Metropolitan staff will continue to work with the CWE to try to resolve the six remaining creditor claims. (See General Counsel's November 2007 Activity Report)

#### Global Warming Solutions Act of 2006 (AB 32)

California's landmark greenhouse gas (GHG) emission legislation, AB 32, requires the California Air Resources Board (CARB) to:

- Establish by January 2008 a statewide greenhouse gas emissions limit to be achieved by 2020 equivalent to California's 1990 greenhouse gas emissions. Statewide emissions limits will include emissions from the generation of all electricity consumed and imported for consumption within the state.
- Adopt mandatory reporting rules for significant statewide sources of greenhouse gases by January 2008.

- Adopt a plan by January 2009 indicating how emission reductions will be achieved from significant greenhouse gas sources via regulations, market mechanisms and other actions.
- Adopt emission limits and reduction measures by January 2011 to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas, including provisions for using both market mechanisms and alternative compliance mechanisms.
- Begin enforcement of the statewide greenhouse emissions limits in January 2012.
- Convene an Environmental Justice Advisory Committee and an Economic and Technology Advancement Advisory Committee to advise CARB.
- Ensure public notice and opportunity for comment for all CARB actions.
- Prior to imposing any mandates or authorizing market mechanisms, CARB must evaluate several factors, including but not limited to impacts on California's economy, the environment and public health; equity between regulated entities; electricity reliability, conformance with other environmental laws and ensure that the rules do not disproportionately impact low-income communities.

On December 4, Metropolitan submitted comments to CARB concerning its proposed regulations for mandatory greenhouse gas emissions reporting. Metropolitan requested that CARB modify its proposed regulatory definition of "retail provider" so that Metropolitan is not included, and instead suggested alternative reporting categories that would more accurately capture Metropolitan's role within the electricity sector. In addition, Metropolitan expressed concern with the proposed assignment of an 1100 pound per megawatt hour emission factor to energy purchases from zero emission large hydroelectric plants. Metropolitan supported the rigorous and consistent accounting called for in AB 32 and reporting of actual emissions from specified sources in lieu of the arbitrary default factors proposed in the regulation.



CARB's Executive Officer has been directed to take final action to adopt the proposed regulation for the mandatory reporting of greenhouse gas emissions after modifications have been made pursuant to comments received and additional comment period(s), which are expected to close in January 2008.

Text of AB 32:

[http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_0001-0050/ab\\_32\\_bill\\_20060927\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf)  
Rulemaking for Mandatory Reporting of GHG emissions:  
<http://www.arb.ca.gov/regact/2007/ghg2007/ghg2007.htm>

## Items of Interest

Heather Beatty will join the Legal Department on February 4, 2008, as a Senior Deputy General Counsel. She was selected from a large pool of highly qualified candidates. Ms. Beatty is currently a partner in the Labor and Employment and Litigation Groups at Bingham McCutchen, where she has been employed since 1998. Prior to that, she was employed at Burke, Williams & Sorensen. Ms. Beatty received her J.D. degree from Loyola Law School and possesses a Bachelor of Arts degree from the University of California at Berkeley.