



Metropolitan Cases

Watershed Enforcers, project of California Sportsfishing Alliance v. California Department of Fish & Game, et al. (Watershed Enforcers II) (Alameda County Superior Court)

On January 29, 2008, the Court of Appeal granted the joint request of all parties to stay further proceedings in the Court of Appeal until January 1, 2009. This is a significant development. With this stay, there will hopefully be time for the U.S. Fish and Wildlife Service to issue a new federal Biological Opinion for Delta smelt (now due on September 15, 2008), and time for Department of Water Resources to seek and presumably obtain a California Endangered Species Act (CESA) consistency determination based on that new Delta smelt Biological Opinion. If all of this can be done before the stay expires on January 1, 2009, it may moot out the CESA-authorization issue being litigated in the *Watershed Enforcers* case with respect to the Delta smelt. (See General Counsel's October 2007 Activity Report)

QSA Related Litigation (California Court of Appeals)

On January 31, 2008, the Sacramento Superior Court denied the request of certain Imperial Irrigation District landowners and environmental plaintiffs for a preliminary injunction to enjoin the Quantification Settlement Agreement transfers, primarily the Imperial Irrigation District-San Diego County Water Authority transfer. The court also rescheduled the hearing on certain motions to dismiss certain claims in the QSA cases from January 31 to February 5, 2008. (See General Counsel's August 2007 Activity Report)

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

On January 24, 2008 Metropolitan was served with Northrop Corporation's cross-complaint after its motion to name Metropolitan and a number of other cross-defendants was granted. As reported in the General Counsel's Activity Report of December 2007, this case was 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 (volatile organic compounds) 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. The cross-complaint seeks indemnity from OCWD, Metropolitan and other cross-defendants and contains a specific nuisance cause of action against OCWD and Metropolitan. The Legal Department is in the process of preparing a response to the cross-complaint.

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

On December 12, 2007, AFSCME withdrew an unfair practice charge that challenged the use of customer service standards in employee evaluations. AFSCME withdrew the charge after Metropolitan lodged its position statement. The position statement identified MOU provisions recognizing that customer service standards may be used by management to evaluate and discipline employees.

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

On December 21, 2007, PERB dismissed an AFSCME unfair practice charge. The charge challenged certain job duties listed in a job posting for an Aqueduct System Dispatcher position. PERB dismissed the charge after Metropolitan lodged its position statement. The position statement concluded that AFSCME's charge did not allege a *prima facie* violation of the Myers-Milias-Brown Act.

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

On December 27, 2007, PERB issued a complaint in response to four unfair practice charges filed by AFSCME. These charges challenge certain job duties listed in four job postings for Maintenance Mechanic I positions. An informal conference is scheduled for February 27, 2007. Although



Metropolitan Cases ...Continued

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

Metropolitan disputes the complaint on the basis that management has the prerogative to include the challenged duties in job postings, Metropolitan will explore whether a settlement can be achieved at the informal conference.

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

On January 10, 2008, PERB dismissed an AFSCME unfair practice charge. The charge challenged improvements management made to monitoring and scheduling employee environmental, health and safety training. PERB dismissed the charge after Metropolitan lodged its position statement. The position statement concluded that AFSCME's charge did not allege a *prima facie* violation of the Myers-Milias-Brown Act.

AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)

On January 16, 2008, Hearing Officer Kenneth Perea dismissed a hearing officer appeal lodged by AFSCME Local 1902 on the basis that the five underlying grievances were not timely grieved pursuant to MOU timelines. The underlying grievances challenged job audit results issued by Human Resources, which determined grievants are properly classified. AFSCME did not lodge its grievances until two years after the issuance of the job audit results. Since the MOU requires grievances to be lodged within 30 business days of the purported date of violation, Mr. Perea determined that proper application of the MOU mandates dismissal of the hearing officer appeal.

AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)

On February 4, 2008, Hearing Officer Kenneth Perea issued a decision rejecting AFSCME's challenge to a job audit result. The underlying grievance alleged Human Resources conducted a flawed job audit by concluding the grievant is appropriately classified as a Maintenance Mechanic I. Hearing Officer Perea determined Human Resources conducted a proper audit, and that the employee is appropriately classified as a Maintenance Mechanic I. Mr. Perea also ruled that

AFSCME cannot modify the MOU grievance and job audit process at the hearing officer stage by making a request to place an employee into a job classification that was not identified by the employee or AFSCME during the job audit or grievance process.

Maria Belen Guerra v. City of Los Angeles, et al. (Los Angeles Superior Court)

This is a slip and fall, personal injury lawsuit against the City of Los Angeles and Metropolitan. The property alleged to have been in a dangerous condition at the time of the accident is owned and maintained by the Department of Water and Power of the City of Los Angeles. Despite the fact that Metropolitan has no ownership or other interest in the property, it was nonetheless sued, even after a declaration of non-ownership was given to Guerra's attorney.

This case has been settled. After Guerra's deposition on January 15, 2008, the Deputy City Attorney assigned to the case admitted to Guerra's attorney that the City owned and maintained the property in question - something the City had not previously admitted. Based on this admission, Guerra's attorney offered to dismiss Metropolitan from the case in exchange for a waiver of costs and fees. Inasmuch as there were no costs on the incurred on the case, and the fact that a fee recovery was extraordinarily unlikely, Metropolitan agreed to the settlement.

Louise St. Juste v. Metropolitan, et al. (Los Angeles Superior Court)

On January 16, 2008, Metropolitan was served with a Summons and Complaint in the above-entitled case. The Complaint for personal injury (motor vehicle) names both Metropolitan and an employee, and arises from a motor vehicle collision that occurred at 7:45 a.m. on January 10, 2006. The case is somewhat complicated by the fact that plaintiff's vehicle, while stopped on the shoulder of the freeway where the collision occurred, sustained a second collision at 8:40 a.m. while plaintiff remained seated in her vehicle. Additional defendants are named in the lawsuit resulting from this second collision.



Matters Involving Metropolitan

State Water Resources Control Board Pelagic Organism Decline Workshop

The State Water Resources Control Board (SWRCB) held an all day workshop on January 22, 2008 to take comments on recent scientific progress and to hear recommendations for actions that the SWRCB could be taking to help Delta smelt and other pelagic species. The State Water Contractors gave a major presentation, recommending that the SWRCB greatly increase toxics monitoring, study possible negative impacts from entrainment of Delta smelt into agricultural diversions, consider

stopping operation of the Suisun Marsh Salinity Control Gates, but to allow existing processes to deal with water project operational issues.

Longfin Smelt CESA Petition

The California Fish and Game Commission will consider at its February 7-8, 2008 meeting whether to accept the petition to list the longfin smelt under the California Endangered Species Act and make the longfin a candidate species under CESA. The Commission also may consider adopting incidental take regulations for longfin at this same meeting. Metropolitan legal staff will be closely monitoring this action.

Cases to Watch

***Natural Resources Defense Council v. Secretary of the Interior Kempthorne* (ESA Delta smelt case) (U.S. District Court)**

On January 23, 2008, Judge Wanger ruled on certain motions that raised two main issues: (1) whether the court properly had jurisdiction to enjoin the Department of Water Resources (DWR) operation of State Water Project (SWP) operations -- which is a legal issue that was raised during the interim remedy proceeding but never completely resolved -- and (2) whether the current complaint allowed the environmental plaintiffs to seek rescission (or termination) of certain Central Valley Project (CVP) contracts that were entered into under the old, now-invalidated Delta smelt Biological Opinion. In his January 23, 2008 Order, Judge Wanger ruled that: (1) he did have jurisdiction to issue injunctive relief against DWR prescribing how the SWP should be operated in the interim period, and (2) the current complaint was not sufficient for plaintiffs to seek rescission of certain CVP contracts that were entered into during 2005-2006 or that involved irrigation districts who are not currently parties to the lawsuit. The court gave the plaintiffs 30 days to decide whether to file a new complaint that adds additional CVP contractors to the lawsuit. (See General Counsel's October and December 2007 Activity Reports)

***Coalition for a Sustainable Delta v. Carlson* (U.S. District Court)**

On January 29, 2008, the Coalition for a Sustainable Delta and certain Kern County-based irrigation districts filed an Endangered Species Act lawsuit against the members of the California Fish and Game Commission and officials of the California Department of Fish and Game in federal court in Sacramento. The plaintiffs in this case rely on water pumped from the Delta and are adversely affected by the restrictions upon pumping imposed in *NRDC v Kempthorne*. The plaintiffs allege that striped bass are preying upon and eating various ESA-listed species, including juvenile winter-run salmon smolts and Delta smelt. They further allege that the California Fish and Game Commission and California Department of Fish and Game have imposed restrictions on the number of striped bass that can be taken by fishermen, and have adopted management targets that maintain a large striped bass population. They contend that these actions create a large striped bass population that preys upon ESA-listed species and contributes to the endangerment of those ESA-listed species, and that those actions of the California wildlife agencies are unlawful under the ESA, and should be enjoined. Metropolitan is not named in the litigation but legal staff is



evaluating the possible impacts and implications of this new ESA lawsuit.

Items of Interest

On January 8, 2008, the Legal Department and Ethics Office co-sponsored a Legal Counsel Member Agency Dinner. The event, which was very well attended, provided an interactive program by Life Theatre Services on Bias and the Challenge of Inclusion and qualified for continuing legal education credit.