



Metropolitan Cases

In re: Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (“CALFED EIR” Cases) (California Supreme Court)

On March 4, the California Supreme Court finally announced that it calendared oral argument in the CALFED EIR cases for April 2 in Los Angeles. Metropolitan petitioned for review of this case as did the State, the State Water Contractors, and Westlands Water District. The Court granted all petitions in January 2006.

This case concerns the EIR for the CALFED Program, approved in the fall 2000. The underlying lawsuits are two CEQA challenges to the CALFED Program EIR brought against the State by the California Farm Bureau in one case and by the Regional Council of Rural Counties and the Central Delta Water Agency in another. Metropolitan intervened in the cases to defend the CALFED Program. Although the trial court dismissed the challenges, the Court of Appeal overturned the trial court and invalidated the EIR.

The Court of Appeal's decision was largely based on the notion that the CALFED agencies failed to consider a project alternative of reducing exports from the Delta that, in the Court of Appeal's view, was feasible because it would curb population growth in the areas dependent on Delta supplies. The court reached this conclusion even though a basic objective of the CALFED Program was to improve the reliability of water exports. The Court of Appeal also faulted the EIR for its discussion and analysis of future water sources for the Program and for the level of detail in describing one of the Program elements, the “Environmental Water Account”.

The Supreme Court's review of the Court of Appeal decision will answer the question of whether, under CEQA, an EIR is required to consider an alternative that is designed to suppress population growth and which does not meet the basic project objectives. It will also address the sources of water issue.

In the narrow sense, the Court's decision can affect how the CALFED Program moves forward and whether improvement in water supply reliability

remains as a core objective of the Program. In the broader sense, the Court will decide whether the judicial branch has the authority to advocate policy positions concerning growth or whether those policy decisions are reserved to the political branches. (See the General Counsel's March 2006 Activity Report)

Alameda County Flood Control & Water Conservation District Zone 7, et al. v. California Department of Water Resources, et al., etc. (Sacramento Superior Court)

As reported to you previously, the Court will hear cross motions for summary judgment on April 7. Plaintiffs assert that Article 22 requires DWR to credit the Delta Water Charge (DWC) with the market value of the power generated by Hyatt-Thermalito (H-T), including revenues from power sales to third parties since 1983. In contrast, Intervenor/Defendants, including Metropolitan and DWR, assert that Article 22 permits DWR to assign a lower value to the credit it applies to the DWC for H-T power (such as cost), and that revenues from third party sales since 1983 are not part of the credit. (See General Counsel's May 2007 Activity Report and October 9, 2007 Board Letter 8-8)

Cadiz, inc. v. Metropolitan (Los Angeles Superior Court)

The original schedule for the *Cadiz* matter was for final status conference (FSC) on April 1 and trial on April 7. The FSC is usually the last court appearance prior to trial. There were 15 pre-trial motions and other administrative matters scheduled. Due to the heavy workload in the court, the FSC was rescheduled for April 14.

The court requested estimates of the duration of the trial. The parties estimated 3-4 weeks. The court indicated that if the trial is estimated to exceed 4 weeks it will be sent to another court that handles "long-cause" matters. The parties expressed a desire to remain with this judge. She indicated that she may establish a time limit for each side to present their case to insure the case is completed in less than 4 weeks. The parties did not object to this.



The court indicated that she will attempt to send the matter out for a mandatory settlement conference prior to the FSC. The trial date will be reset on April 14 at the FSC.

Hills for Everyone, et al. v. Metropolitan (Orange County Superior Court)

On March 13, 2008, Hills for Everyone, Planning Conservation League, Friends of Harbors, Beaches, and Parks, and Defenders of Wildlife (collectively, Petitioners) filed a lawsuit against Metropolitan challenging the Diemer North Access Road Project (project). Petitioners argue that the final environmental impact report (Final EIR) for the project was inadequate primarily because it failed to fully address impacts to walnut woodlands that lie along the proposed road corridor on Metropolitan's property. Petitioners seek an injunction to stop construction pending litigation, an order setting aside the Final EIR and board approvals of the project, and attorneys' fees and costs. We expected this lawsuit and are fully prepared to defend the matter.

QSA Related Litigation (Sacramento Superior Court)

In the coordinated Colorado River Quantification Settlement Agreement cases, challenging the QSA and its related agreements, the Sacramento Superior Court issued an order in March dealing with various administrative record issues. A hearing on other procedural aspects of the QSA cases is set for April 3, 2008, and a further status conference is set for May 29, 2008. (See General Counsel's August, September and December 2007 Activity Reports and January and February 2008 Activity Reports)

Soboba Band of Luiseño Indians v. Metropolitan Water District (United States District Court)

On March 13, 2008, the House Water and Power Subcommittee heard testimony on H.R 4841, the Soboba Band of Luiseño Indians Settlement Act of 2007. The bill ratifies the settlement of the lawsuit originally filed in April of 2000. The lawsuit mainly sought damages and injunctive relief for the continuing drainage of water from the Tribe's Reservation into Metropolitan Water District's San Jacinto Tunnel, which has been ongoing since the Tunnel's construction in 1932. The Tunnel was constructed by Metropolitan and is a key component of the Colorado River Aqueduct. The Tribe, Metropolitan, Eastern Municipal Water

District and Lake Hemet Municipal Water District are all parties to the settlement which was approved by Metropolitan's Board of Directors in March, 2004.

In addition to the bill's cosponsor, Congresswoman Mary Bono Mack, Soboba Tribal Chairman Robert Salgado and Eastern's Randy Record testified, as did members of the administration, which offered full, unqualified support. Written testimony on Metropolitan's behalf supporting the bill was submitted by the General Counsel. The bill is cosponsored by Representative Joe Baca.

The bill next goes to markup in the full committee, probably in the first or last week of April, and then to the House floor. (See General Counsel's February 2007 Activity Report)

Gregg Whittlesey v. Metropolitan (Los Angeles County Superior Court)

On December 7, 2007, Metropolitan was served with a summons and complaint for damages by Gregg Whittlesey, a former Metropolitan employee. Plaintiff alleges three causes of action: wrongful termination in violation of public policy, defamation, and intentional infliction of emotional distress. Metropolitan filed its answer, containing a general denial and affirmative defenses, on January 4, 2008. Metropolitan has served requests for production of documents, to which Plaintiff must respond in late March 2008, and has noticed Plaintiff's deposition for April 2008. Plaintiff has served requests for production of documents and two sets of interrogatories, to which Metropolitan must respond in April 2008. The parties will appear for the first Case Management Conference on April 2, 2008, at which the Court will likely schedule the trial and other dates. (See General Counsel's February 2008 Activity Report)

Juli Smith v. Metropolitan, et al. (Los Angeles County Superior Court)

On March 27, 2008, former Metropolitan employee Juli Smith filed a complaint in Los Angeles County Superior Court against Metropolitan and five Metropolitan employees. Plaintiff alleges three causes of action against all defendants: violation of Labor Code Section 6310 (a "whistleblower" protection statute), wrongful termination in violation of public policy, and intentional infliction of emotional distress. Neither Metropolitan nor, to our knowledge, any of the individual defendants has been served with the summons and complaint.



Once served, the defendants will file their

responsive pleading(s) within 30 days.

Matters Involving Metropolitan

State Water Resources Control Board Approval of the Yuba River Accord

On March 18, 2008, the State Water Resources Control Board (SWRCB) approved the so-called "Yuba River Accord," which includes water transfers to Metropolitan. This process began as a complaint by environmental groups to SWRCB regarding the Yuba County Water Agency's (YCWA) impacts on fish in the Yuba River. In 2001 SWRCB ordered YCWA to increase flows in the river to benefit fish and YCWA sued SWRCB to invalidate the increased flows. At the same time, YCWA began negotiating with the environmental groups and fishery agencies to determine whether those parties could agree on a flow regime that better met the needs of the fish and YCWA. Subsequently, YCWA also began negotiations with Metropolitan, the Department of Water Resources

and other state and federal export water contractors to transfer the increased instream flows plus additional new water to the contractors. YCWA ultimately reached agreement with the environmental groups and fish agencies on appropriate instream flows and with Metropolitan and the other contractors on a water transfer. Metropolitan's Board approved Metropolitan's participation in the transfer agreement in November 2007. The transfer would provide Metropolitan with approximately 14,000 to 35,000 acre-feet in dry years during the 18-year term of the agreement (commencing this year) for between \$50 and \$125 per acre-foot. SWRCB's March 18 action approved the instream flow settlement and authorized the transfer of YCWA water to State Water Project and Central Valley Project service areas.

Items of Interest

Metropolitan issued \$501,575,000 principal amount of Water Revenue Refunding Bonds, 2008 Series A-1 and A-2, on March 25, 2008, to redeem all of Metropolitan's outstanding bonds issued as auction rate securities. The interest rates on the auction rate securities spiked after the bond insurer was downgraded by credit rating agencies. Metropolitan staff attorneys filed notices of redemption on February 22 and worked with Finance staff, bond counsel and attorneys for the underwriters and liquidity banks to issue the refunding bonds. The entire financing was completed in less than thirty days, resulting in interest rate savings. The timing of this refunding was fortuitous because the credit rating of the bond insurer for the auction rate securities, XLCA, was downgraded the day after closing.

The Legal Department held a retreat on March 5 at the Weymouth treatment plant. The retreat focused on the department's top priorities and goals, its structure, communication within and outside of the department, and employee career paths. In addition, educational segments included a presentation on the history of the Legal Department and tours of the Water Quality Laboratory and the water treatment plant.