



Metropolitan Cases

***Central Basin Municipal Water District v. Metropolitan* (Los Angeles Superior Court)**

The Los Angeles Superior Court denied Central Basin Municipal Water District's *ex parte* application to transfer this case to the San Francisco Superior Court on May 16, 2008. A hearing to reconsider the motion has been scheduled for June 19, 2008. Under California Code of Civil Procedure section 394 an action between two public agencies must be transferred to a neutral county on the motion of either of the agencies. However, the request is generally considered in a noticed motion, rather than on a unilateral *ex parte* application. For this reason, and because Metropolitan and Central Basin have not yet met to discuss a potential stipulation for the change of venue, Metropolitan opposed the *ex parte* application. Counsel for the parties held an initial settlement conference required by CEQA on May 29, 2008, where this and other issues were discussed, but not resolved. (See General Counsel's April 2008 Activity Report)

***Juli Smith v. Metropolitan, et al.* (United States District Court, Central District of California)**

On March 27, 2008, former Metropolitan employee Juli Smith, who was released during her probationary period, filed a complaint in Los Angeles County Superior Court against Metropolitan and five Metropolitan employees. Plaintiff alleged 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. Plaintiff then amended her complaint to add a fourth cause of action for harassment and/or discrimination based on gender, against Metropolitan and three of the individual defendants. To date, plaintiff has served two of the individual defendants with the summons and amended complaint. These

defendants removed the case to the United States District Court, Central District, and will file their responsive pleading on June 5, 2008. The other defendants will file their responsive pleading within 30 days of service. (See General Counsel's April 2008 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 who was released during his probationary period. 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. The parties are engaged in discovery. Both parties have responded to requests for production of documents. Metropolitan has responded to interrogatories and taken two days of plaintiff's deposition. The parties appeared at the first Case Management Conference in April 2008, at which the Court set a jury trial to begin on December 3, 2008 and ordered the parties to participate in a mediation by August 2008. (See General Counsel's March and April 2008 Activity Reports)

***Raymond Eastridge v. Metropolitan* (Los Angeles Superior Court)**

Metropolitan was served with this personal injury lawsuit on May 9, 2008. Plaintiff alleges that he fractured his leg due to a dangerous condition of public property. He is also suing the City of Lomita, the County of Los Angeles and the State of California. A Metropolitan manhole cover is located at Walnut Avenue and Pacific Coast Highway in the City of Lomita, the location where plaintiff allegedly slipped and fell. This matter will be defended by in-house counsel.

Matters Involving Metropolitan

Endangered Species Act Consultations Regarding State Water Project and Central Valley Project Operations

Date of Report: May 30, 2008

On May 16, 2008 the Bureau of Reclamation (USBR) submitted its Biological Assessment to the United States Fisheries Service (USFWS) and



National Marine Fisheries Service (NMFS). The Biological Assessment describes how USBR intends to operate the CVP and how DWR intends to operate the SWP, and officially starts the consultation process under the Federal Endangered Species Act to obtain new Biological Opinions and take authorizations covering operation of the two projects. The new Biological Opinions, one issued by USFWS covering resident species in the Delta such as Delta smelt and one issued by NMFS covering anadromous species such as salmon, will replace the prior Biological Opinion invalidated by Judge Wanger. Upon submission of the Biological Assessment, USFWS and NMFS each have 30 days to decide whether it is complete enough for review and another 135 days to finalize a Biological Opinion. In addition, Judge Wanger has ordered USFWS to finish its Biological Opinion by September 15, 2008 and likely will consider whether to impose a deadline on NMFS in hearings scheduled during June.

Grand Canyon Trust v. U.S. Bureau of Reclamation (United States District Court, Arizona District).

On May 8, Metropolitan moved jointly with Imperial Irrigation District (IID) and Central Arizona Water Conservation District (CAWCD) to intervene in this case. Plaintiff alleges the Bureau of Reclamation is operating Glen Canyon Dam in violation of the federal Endangered Species Act (ESA) and National Environmental Protection Act (NEPA). Specifically, plaintiff asserts that Reclamation must modify release patterns more closely to mimic natural seasonal runoff for the benefit of particular endangered fish species. In one cause of action, plaintiff contends that Reclamation's Annual Operating Plans (AOPs) are subject to annual ESA and NEPA review. Among other things, the AOP process reflects decisions affecting Metropolitan's annual entitlements to diversions into the Colorado River Aqueduct. Metropolitan, IID, and CAWCD base the joint motion on their common interest in ESA implementation in the Colorado River Basin and the AOP process. The court has not yet set a date for hearing of the intervention motion or the intervention motion of the seven Basin States. In

June or July, we expect the court to rule on summary judgment motions directed at the merits of plaintiff's ESA and NEPA claims. This case is similar in many respects to the 2006 case of *Center for Biological Diversity vs. Reclamation*. In that case, Metropolitan also moved to intervene and has standing to enforce terms of a settlement agreement.

Application to Resume Normal Operation of Garvey Reservoir

The Legal Department assisted Engineering and Water System Operations (WSO) with the preparation of an application to resume normal operations of Garvey Reservoir. Metropolitan entered into a settlement agreement with the City of Monterey Park (City) in 1993, settling the City's CEQA (California Environmental Quality Act) challenge to Metropolitan's Garvey Reservoir Restoration Project Final Environmental Impact Report. Under the settlement agreement Metropolitan is prohibited from raising the reservoir above 561 feet for more than two consecutive days, and must maintain an annual average of 545 feet or lower. Both levels are well below the 571-foot maximum. Metropolitan is also subject to strict monitoring and reporting requirements.

The agreement contemplated that these restrictions would be in place for 10 years. Metropolitan may submit an application to raise the level of the reservoir following the ninth anniversary of date we commenced use of the reservoir. Metropolitan submitted its application on May 15, 2008. Pursuant to the requirements of the settlement agreement, the application included a specific description of the proposed changes, and Metropolitan's analysis, evidence, findings, and conclusions that demonstrate that the proposed operational changes "do not materially increase the risk of injury to persons or damage to property."

Engineering and WSO staff are participating in Technical Coordination Committee meetings, as required in the settlement agreement, to discuss Metropolitan's application. The Legal Department is monitoring the negotiations.