



Metropolitan Cases

***Soboba Band of Mission Indians v. Metropolitan* (U.S. District Court, Central District)**

On July 31, 2008 President George Bush signed Public Law 110-297, the Soboba Band of Luiseño Indians Settlement Act. The Act authorizes the federal government, as trustee for the Tribe, to enter into the settlement authorized by Metropolitan's Board of Directors on June 8, 2004. The passage of this law concludes a dispute that has lingered for many years.

In 1933, Metropolitan began construction of a tunnel through the San Jacinto Mountains as part of its Colorado River Aqueduct. The tunnel is thirteen miles long and sixteen feet in diameter. Due to the location of the tunnel and the tunneling techniques available at the time, a large amount of water was discharged from the tunnel during the course of construction. Water seepage into the tunnel has continued to the present time.

For decades, the Sobobas have alleged a water rights damage claim against Metropolitan. Attempts to settle the claim date back to 1948. On April 20, 2000, the Sobobas filed the subject lawsuit against Metropolitan. The lawsuit sought an injunction requiring Metropolitan to halt use of the tunnel, over \$200 million in compensatory damages or restitution for water sold, attorney's fees, interest and costs.

In December 2002, the parties, including the Tribe, the United States, Eastern Municipal Water District and Lake Hemet Municipal Water District, reached agreement on broad principles of settlement. The parties then negotiated a detailed settlement agreement, along with the necessary authorizing legislation and stipulated judgment.

The major features of the settlement are that Eastern and Lake Hemet, via a groundwater management plan, will guarantee the Tribe a first priority right to 9,000 acre-feet of water in the San Jacinto river basin. Eastern will also pay the Tribe \$17 million in cash, services and other consideration. The United States will pay the Tribe a total of \$21 million.

Metropolitan will not contribute money to the settlement. Metropolitan will enter into a water supply contract with Eastern wherein Metropolitan will furnish Eastern 7,500 acre-feet of water a year on average at its seasonal storage rate. This water, to go into the groundwater basin, will be supplied under terms similar to Metropolitan's seasonal storage program, except that Eastern may take the water from the basin in the same year that it is put in. Metropolitan need only meet the 7,500 acre-feet goal on a 15-year average and may pre-deliver up to 40,000 acre feet. This water supply contract will expire in 2035, although the parties have agreed to consider an additional 15 years depending on the status of the State Water Project contract and other factors.

Metropolitan will also transfer approximately 20 acres of land it owns near Diamond Valley Lake to the Tribe. This land is contiguous to 80 acres of land owned by Eastern that will also be transferred to the Tribe. Metropolitan acquired this property for the construction of Domenigoni Parkway, part of the Diamond Valley Lake Environmental mitigation.

On August 15, 2008, Metropolitan's Chairman of the Board, along with its General Counsel and staff, attended a ceremony at the Soboba reservation celebrating the passage of Public Law 110-297. Secretary of the Interior Department Dirk Kempthorne and Congresswoman Mary Bono Mack, the bill's sponsor, also attended the ceremony. (See General Counsel's March 2008 Activity Report)

***Cadiz, Inc. v. Metropolitan* (Los Angeles Superior Court)**

At the conclusion of a telephonic meeting on August 6 with Judge Lichtman, the settlement judge in this matter, Judge Lichtman declared the settlement discussions at impasse and indicated he was returning the matter to the jurisdiction of the trial judge, Judge Johnson. Also on August 6 (prior to the commencement of the telephonic meeting), Cadiz filed a notice stating that settlement discussions had failed and requesting the court to set an immediate trial date.



After the settlement discussions were terminated, Metropolitan notified Cadiz that it was filing a Motion for Judgment on the Pleadings that asserts Metropolitan's immunity defense to the only remaining cause of action, breach of fiduciary duty. The motion was subsequently filed with the court and scheduled for hearing on September 23. A status conference is scheduled with the trial judge on September 3. (See General Counsel's April 2008 Activity Report)

FERC Relicensing of the Oroville Facilities

As previously reported, a proposed Settlement Agreement containing recommended conditions for a new license for the Oroville Facilities was submitted to the Federal Energy Regulatory Commission (FERC) in March 2006. That agreement was signed by over 50 stakeholders, including Metropolitan, other State Water Contractors (SWCs), the City of Oroville, the Town of Paradise, various business and recreation interests, and several key federal and state regulatory agencies. In addition, the California Department of Water Resources (DWR), Metropolitan and other SWCs recently concluded negotiations with several irrigation districts that successfully resolved their concerns regarding the project's potential impacts on rice production.

Despite such support, certain parties oppose the Settlement Agreement and are seeking to have FERC impose license conditions in addition to or different from those recommended under the agreement. In particular, Butte County asserts that the State Water Project (SWP) has resulted in hundreds of millions of dollars in socioeconomic impacts. Butte County is attempting to use this relicensing process to obtain compensation for such impacts. In addition, Plumas County asserts that the SWP has adversely impacted fish and wildlife and water resources upstream of Lake Oroville, and that the Settlement Agreement fails to address such impacts.

On May 18, 2007, FERC staff issued a Final Environmental Impact Statement (EIS) for the relicensing project in which it rejected nearly all of the arguments made by the Butte and Plumas Counties and others opposed to the Settlement Agreement. With only a few minor modifications, FERC staff is recommending that the Settlement Agreement be adopted as the conditions for the new license. However, FERC will not issue a final Record of Decision until DWR has completed its environmental review and has obtained certain

other permits and approvals from state and federal regulatory agencies. With respect to the environmental review, DWR issued a Final Environmental Impact Report (EIR) for the relicensing project on July 22, 2008. The Final EIR largely mirrored the Final EIS and incorporated the minor changes recommended by FERC staff. A Notice of Determination approving the project was filed that same day.

On August 21, 2008, Butte County and Plumas County filed separate lawsuits challenging the adequacy of the Final EIR. These lawsuits name DWR as the primary defendant and all other signatories to the Settlement Agreement, including Metropolitan, as "real parties in interest." The Butte County complaint alleges that DWR's environmental review contains four "foundational errors": (1) failure to conduct a "rigorous climate change assessment"; (2) failure to analyze how changing conditions in the Delta will affect future operations of the project; (3) failure to identify the significant impacts associated with "perpetuating old operating rules"; and (4) failure to address the project's "environmentally significant socio-economic consequences for Butte." This complaint goes on to assert that these errors undermined DWR's overall analysis of project impacts, mitigation measures and alternatives. The Plumas County complaint contains essentially the same allegations as the Butte County complaint, except that it also asserts that DWR failed to properly analyze the Project's upstream impacts.

The General Counsel's Office is currently assessing how best to respond to these complaints and whether to retain outside counsel with California Environmental Quality Act expertise to represent Metropolitan in this action, either alone or as part of a broader defense group. (See General Counsel's October 2006 Activity Report)

Alameda County Water District, et al., v. Sacramento Regional County Sanitation District (California Court of Appeal, Third District)

In August, the Sacramento Regional County Sanitation District (SRCSD) filed its opening brief in the appeal of the Sacramento Superior Court's ruling that invalidated the Environmental Impact Report (EIR) for a major wastewater treatment plant expansion project. Metropolitan, other urban State Water Contractor agencies, and the Contra Costa Water District brought this successful CEQA challenge in response to significant, unmitigated



degradation of Delta water quality that would occur from the expansion project, which proposes a 42 percent increase in wastewater discharges to the Sacramento River while providing only a secondary level of treatment. Briefing of this case in the Court of Appeal will occur through the fall. (See General Counsel's April and July 2008 Activity Reports)

Metropolitan Water District v. Campus Crusade for Christ, Inc. (San Bernardino County Superior Court)

This eminent domain action was brought by Metropolitan in 1997 to acquire property rights for construction and operation of the Inland Feeder Project. Campus Crusade owns approximately 1,825 acres in the San Bernardino mountains. Metropolitan needs 10 acres of the property for the Waterman Canyon portal of the Arrowhead West Tunnel. In addition, about 27 acres are encumbered with easements for the pipeline connecting the Arrowhead East and Arrowhead West tunnels.

The eminent domain case was first tried in 2003, and a favorable judgment was won by Metropolitan. Campus Crusade appealed the judgment and won a reversal by the California Supreme Court. In particular, the Supreme Court ruled that the trial judge had used an improper legal standard in excluding evidence offered by Campus Crusade that the property was reasonably likely to be re-zoned for resort development, and that the project caused severance damages to the remainder of the property. The case was returned to the superior court for a re-trial on the issue of damages.

In an effort to limit the scope of discovery and the evidence presented at the re-trial, Metropolitan brought a motion to exclude evidence of actions that occurred after the December 2006 date of value. The motion was heard on August 14 and was denied. The judge indicated that he would consider the motion again at the commencement of trial based on the evidence being offered and how it is proposed to be used by the expert witnesses.

As a result of this ruling, Metropolitan has commenced extensive discovery into Campus Crusade's efforts in recent years to annex the property into the City of San Bernardino and obtain a change in the zoning to allow construction of a resort development on the property. Campus

Crusade has indicated that it will produce numerous documents related to this issue.

In other developments, the case has been re-assigned to Judge Paul M. Bryant, Jr. Campus Crusade has retained the law firm of Hill, Farrer & Burrill as co-counsel with their current attorneys, Redwine & Sherrill. With the new judge and attorneys, and the need to engage in extensive discovery on the issues remanded for the re-trial, all parties agreed that the case would not be ready for trial until late 2009. Another status conference in the case has been set for January 8, 2009. (See General Counsel's July and September 2007 Activity Reports)

Colorado River QSA Coordinated Cases (Sacramento Superior Court)

In these cases, which challenge the Quantification Settlement Agreement and related agreements, the Sacramento Superior Court issued final rulings on August 7, 2008 on discovery and motions to augment the administrative record. The Court denied all requests for discovery except for the request of Cuatro Del Mar for discovery on claims challenging the constitutionality of the State of California's financial obligations under the QSA. The Court also granted various motions to augment the administrative record which will necessitate resubmitting some of the administrative record.

The Court also held a status conference on August 19 and later issued an order on August 28. In that order, the court set deadlines for the parties to file statements of issues for trial, with a further status conference hearing on October 30, 2008. There may be further motions to dismiss some claims after the statements of issues are filed.

The County of Imperial also filed a second amended petition in intervention for writ of mandate on August 9, 2008 in one of the QSA cases. Metropolitan's answer to this petition is due in early September. No trial date has been set yet for these coordinated QSA cases. (See General Counsel's July 2008 Activity Report)

Juli Smith v. Metropolitan, et al. (U. S. District Court, Central District)

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. Plaintiff served two of the individual Defendants with the summons and first amended complaint in April 2008. These Defendants removed the case to the United States District Court, Central District, and filed a motion to dismiss and a motion to strike certain claims. Plaintiff did not oppose the motions, agreed to remove the challenged claims, and did so in a second amended complaint filed on August 12, 2008. This complaint reduces the claims against the individual Defendants and certain damages.

Plaintiff has served the summons and second amended complaint on all individual Defendants, and their response is due on September 11, 2008. Plaintiff has not yet served Metropolitan. The parties have exchanged their initial discovery disclosures pursuant to federal law. The parties appeared at the first Scheduling Conference on July 28, 2008, at which the Court set a trial to begin on June 9, 2009 and ordered the parties to participate in a settlement conference/mediation by March 2009. (See General Counsel's July 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 appeared at the first Case Management Conference in April 2008, at which the Court set a jury trial to begin on December 3, 2008. The parties are engaged in discovery. Both parties have responded to requests for production of documents, Metropolitan has responded to interrogatories, Metropolitan has taken two days of Plaintiff's deposition, and Plaintiff will depose Metropolitan employees in September 2008. Plaintiff seeks further documents and the Court will hear Plaintiff's motion to compel on September 23, 2008.

On August 15, 2008, Metropolitan filed a motion for summary judgment or, alternatively, summary adjudication, requesting dismissal of part or all of the case. The parties participated in mediation on August 18, 2008, but did not resolve the case. On October 31, 2008, the Court will hear Metropolitan's summary judgment/adjudication motion, as well as conduct a mandatory settlement conference. (See General Counsel's June 2008 Activity Report)

Matters Involving Metropolitan

Natural Resources Defense Council v. Secretary of the Interior Kempthorne (Norton) (U.S. District Court) (Delta Smelt case)

At an August 29, 2008 hearing, Judge Wanger granted the federal defendants' request to extend the completion date for the Delta Smelt Biological Opinion from September 15, 2008 to December 15, 2008. Judge Wanger also postponed the hearing on the cross-motions for summary judgment which were scheduled for August 29, 2008. These cross-motions concern whether the renewals of Central Valley Project water contracts that relied on the old, now-invalidated Delta Smelt Biological Opinion should

be voided. (See General Counsel's January 2008 Activity Report)

Pacific Coast Federation of Fishermen's Assns. v. Gutierrez (U.S. District Court) (Salmon case)

At an August 29, 2008 hearing, Judge Wanger granted three Stanislaus River water users the right to intervene in the remedies phase of the salmon Endangered Species Act litigation. The Stanislaus River intervenors' participation will be limited to addressing the plaintiff's future requests for remedies involving Stanislaus River flows. (See General Counsel's July 2008 Activity Report)



Items of Interest

Finances

The Legal Department represented Metropolitan in the replacement of the remarketing agents on three variable rate water revenue bond issues, effective August 25, 2008. The remarketing agent, UBS Securities LLC, had notified Metropolitan that it would stop remarketing the bonds in September. Staff attorneys negotiated and prepared agreements with the three new remarketing agents, and provided the required notices to UBS, the paying agents, standby banks and municipal bond information repositories.