



Metropolitan Cases

Protect Our Water and Environmental Rights (POWER) v. Imperial Irrigation District (POWER I and III) (Imperial County Superior Court)

On November 24, 2008, the Court of Appeal issued its decision in the POWER I and POWER III appeals which involve challenges to the All-American Canal Lining Project. The Court of Appeal upheld the trial court rulings dismissing the POWER I and III lawsuits because the U.S. Bureau of Reclamation is an indispensable party that must be made a party to the lawsuits but cannot be joined because of federal sovereign immunity. (The POWER II lawsuit filed in federal court was dismissed earlier, and that ruling was not appealed.) It is unknown whether POWER will seek California Supreme Court review of the Court of Appeal's decision in POWER I and III but the chances that the California Supreme Court will grant review are small. (See General Counsel's February 2007 and April 2008 Monthly Activity Reports)

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

As previously reported, the Court granted Cadiz leave to amend its complaint to attempt to state a cause of action for breach of fiduciary duty. This amended complaint, Cadiz's third, was served on November 26.

The newly amended complaint alleges that Metropolitan entered into a joint venture partnership with Cadiz based on written and oral agreements. Cadiz asserts that the fiduciary duty owed by partners is applicable to the business relationship between it and Metropolitan. The Court has previously ruled in Metropolitan's favor that Cadiz's causes of action for express and implied contract are without merit. These causes of action cannot be re-litigated.

Metropolitan has thirty days to respond to the third amended complaint, and will file a demurrer on the ground that the pleading fails to state a cause of action. A hearing on the demurrer will likely be calendared by the Court in late January. (See General Counsel's August and October 2008 Monthly Activity Reports)

Central Basin Municipal Water District v. Metropolitan (San Francisco Superior Court)

On November 17, 2008 Judge Karpow granted Metropolitan's motion to quash Central Basin's proposed deposition of a Metropolitan employee related to this litigation. Central Basin sought the deposition to question Metropolitan's employee about the information considered in the adoption of the Water Supply Allocation Plan. Metropolitan's position is that this litigation must be based on Metropolitan's administrative record supporting the decision to adopt the Water Supply Allocation Plan and that additional discovery (including this deposition) and evidence outside that record should not be considered. In refusing to allow Central Basin to conduct this deposition, the Judge agreed with Metropolitan's position that extra record evidence cannot be considered in this case. (See General Counsel's April and September 2008 Monthly Activity Reports)

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

On November 25, 2008, Hills for Everyone, Planning and Conservation League, Friends of Harbors, Beaches, and Parks, and Defenders of Wildlife (collectively, petitioners) filed to dismiss their pending lawsuit against Metropolitan regarding the Diemer North Access Road Project, bringing to a close this litigation that was originally filed on March 13, 2008. The dismissal was "with prejudice," meaning that petitioners are barred from ever filing these claims again.

Petitioners' lawsuit challenged the sufficiency of the Final Environmental Impact Report (EIR) for the project, arguing primarily that it failed to fully address impacts to walnut woodlands that lie along the proposed road corridor on Metropolitan's property. The Board approved the settlement at its July 2008 meeting.

As reported in July 2008, in consideration for the dismissal of the case and petitioners' ongoing cooperation with the project, Metropolitan will make a \$1.2 million payment to petitioners. Of this amount, petitioners must use no less than \$700,000 to preserve walnut woodland habitat



contiguous to Chino Hills State Park, which is adjacent to the project and the Diemer plant. This settlement mechanism satisfies Metropolitan's mitigation obligations for the project, brings closure to the legal challenge and local community opposition, and confers a benefit on the park. Both petitioners' conservation efforts resulting from this settlement and Metropolitan's on-site mitigation plan will help to restore walnut woodlands burned in the recent fires. As previously authorized, staff intends to apply for regulatory permits and commence preparation for construction of the North Access Road immediately. (See General Counsel's March 2008 Monthly Activity Report)

Diemer Plant - Santa Ana Regional Water Quality Control Board Administrative Civil Liability Complaint

Metropolitan recently received an Administrative Civil Liability Complaint from the Santa Ana Regional Water Quality Control Board for two discharges that occurred at the Diemer plant in

April and May of this year. The discharges occurred when a valve was inadvertently left closed and treatment solids overflowed from the plant site into Carbon Canyon State Park. Metropolitan has since implemented several corrective measures, including placing alarms in the control room, to assure that similar incidents will not occur in the future.

Staff promptly reported the incidents to the Regional Board and to State Park officials. When informed that the Regional Board was contemplating an enforcement action following the incidents, Legal and Operations staff met proactively with Regional Board executive staff to discuss the matter and possible resolution. As a result, Metropolitan has been able to agree to a compromised penalty amount of \$77,700, with half of the amount to be dedicated to fund a Supplemental Environmental Project in Carbon Canyon State Park. Under the provisions of Water Code § 13376, the maximum penalty for the two discharges could have been as high as \$597,000.

Matters Involving Metropolitan

Longfin Smelt CESA Take Regulation

On November 14, 2008, the Fish & Game Commission adopted a 90-day extension of an emergency regulation authorizing the incidental take of longfin smelt during the longfin candidacy period. Depending upon how it is applied, the regulation may have substantial

impacts on State Water Project exports over and above those under the criteria imposed by Judge Wanger in the Delta smelt federal court litigation. Metropolitan legal staff have been assisting and working closely with other counsel drafting complaints that may be filed challenging the longfin take regulation. (See General Counsel's January 2008 Activity Report)

Cases to Watch

California Water Impact Network & California Sportfishing Protection Alliance v. Department of Water Resources, State Water Resources Control Board & U.S. Bureau of Reclamation (Sacramento Superior Court)

Plaintiffs California Water Impact Network and California Sportfishing Protection Alliance filed this action on December 1, 2008, alleging that the Department of Water Resources' and the U. S. Bureau of Reclamation's (USBR) export operations have caused numerous negative impacts on the Delta ecosystem. It also alleges that the State Water Resources Control Board (SWRCB) has failed to enforce California law against DWR and USBR. In particular, plaintiffs allege that State Water Project and Central

Valley Project operations violate the Public Trust Doctrine; are unreasonable methods of diversions and use of water; violate the California Fish and Game Code Section 5937 requirement to leave sufficient water in the rivers below project dams; violate the Porter-Cologne Water Quality Control Act; and have not complied with water quality objectives. The complaint seeks an order permanently enjoining DWR and USBR from exporting water from the Delta until their operations "conform with the law," and enjoining SWRCB from allowing the projects to export water until project operations "come into compliance with state law." Staff is reviewing the complaint to determine how best to respond to this litigation in order to protect Metropolitan's State Water Project supply.