



Metropolitan Cases

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

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 Sacramento Regional Sanitation District's planned expansion project, which proposes a 42 percent increase in wastewater discharges to the Sacramento River while providing only a secondary level of treatment. In January, Metropolitan staff in conjunction with outside counsel for other plaintiff water agencies prepared and filed the final reply brief in this appeal and cross-appeal of the Sacramento Superior Court's ruling that invalidated the Environmental Impact Report for a major wastewater treatment plant expansion project. A friend of the court brief was also filed by the Coalition for a Sustainable Delta raising the issue of the plant's potential impacts on Delta smelt due to ammonia. The case is now awaiting oral argument in the Court of Appeal, which is not likely to be set for another 6 to 9 months from now. (See General Counsel's April, July and August 2008 Activity Reports)

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

Metropolitan filed a motion to dismiss certain causes of action and for summary adjudication of issues on other causes of action contained in Central Basin Municipal Water District's first amended complaint on January 30, 2009. Central Basin alleges that Metropolitan's Water Supply Allocation Plan is invalid for a variety of reasons, including an alleged failure to comply with CEQA and a claimed violation of Central Basin's purchase order. The motions filed by Metropolitan seek to dismiss the CEQA causes of action based on Central Basin's failure to name the other member agencies as real parties in interest, which Central Basin cannot now do because the statute of limitations has run on the CEQA claims, and for a summary adjudication in favor of Metropolitan on

the alleged violation of the purchase order. The motion to dismiss the CEQA claims is scheduled for February 6, 2009 and the motion to adjudicate the purchase order claim is scheduled for March 24, 2009. (See General Counsel's April, May, June, September and November 2008 Activity Reports)

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

On January 26, 2009, the parties filed a Stipulated Judgment and an order joining the United States to the case, as authorized by federal legislation passed last year, and the judgment was issued by the court. The filing and the court's order concludes this litigation that began on April 4, 2000. The case arose out of Metropolitan's construction of the San Jacinto tunnel, which began in 1933. Due to the tunnel's location, large amounts of water were discharged into the tunnel during the course of construction. Construction of the tunnel impacted the area's hydrological groundwater systems, and probably contributed to the perennial springs on the Soboba Reservation drying up. (See General Counsel's March and August 2008 Activity Reports)

Raymond Eastridge v. Metropolitan Water District, et al. (Los Angeles Superior Court)

At the mediation of this case on January 21, 2009, Metropolitan agreed to a settlement waiving recovery of its costs in exchange for a dismissal without prejudice. The case arose out of a trip and fall accident that occurred on New Year's Eve 2007 in a crosswalk at the intersection of Pacific Coast Highway and Walnut Avenue in the City of Lomita. Plaintiff tripped on a pothole in the crosswalk and suffered significant injuries. Caltrans, the entity responsible for maintenance of the sidewalk, will pay plaintiff \$180,000. Metropolitan was brought into the case because it owns a subsurface pipeline, vault and turnout at the location. However, Metropolitan was able to convince the other parties that the ponding water that caused the pothole did not come from Metropolitan's facilities. (See General Counsel's May 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 in August 2008. This complaint reduces the claims against the individual defendants and certain types of damages, and retains all claims against Metropolitan. Plaintiff served the summons and second amended complaint on all individual defendants, and in September 2008 they filed their answer, denying any violation of any law. The Legal Department is providing legal representation for the individual defendants. Plaintiff has not served Metropolitan.

The parties appeared at the first Scheduling Conference in July 2008, at which the court set a jury trial to begin June 9, 2009 and ordered the parties to participate in a settlement conference/mediation by March 2009. The parties exchanged initial discovery disclosures pursuant to federal law and have conducted four days of depositions. Defendants served requests for production of documents and interrogatories to plaintiff, but plaintiff failed to respond timely and adequately. In January 2009, defendants obtained a court order compelling the discovery and the court sanctioned plaintiff. Due to plaintiff's discovery delays, in January 2009 defendants also obtained a court order continuing the trial and related deadlines. As a result, the jury trial will now begin August 24, 2009, defendants may pursue discovery through March 2009, and plaintiff's discovery period has ended. (See General

Counsel's March, April, May, June, July, August and September 2008 Activity Reports)

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

On February 27, 2008, AFSCME filed a PERB unfair practice charge alleging Metropolitan violated the Myers-Milias-Brown Act (MMBA) by purportedly discriminating against and interfering with an employee's protected concerted activity. On March 19, 2008, Metropolitan filed a position statement, requesting the charge's dismissal. On July 8, 2008, PERB denied the dismissal request and issued a complaint alleging Metropolitan violated the MMBA by purportedly discriminating against and interfering with an employee's protected self-representation, and by purportedly interfering with AFSCME's right to represent employees. On July 16, 2008, Metropolitan filed its answer denying any violation of any law. On August 7, 2008, the parties held an informal conference before PERB, but were unable to resolve the matter. On January 6 and 7, 2009, the parties conducted a formal hearing (an administrative trial) before a PERB Administrative Law Judge, and presented witnesses and documentary evidence. The parties' closing briefs are due March 6, 2009. Thereafter, the Administrative Law Judge will issue PERB's decision.

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

On December 19, 2008, AFSCME Local 1902 lodged an unfair practice charge alleging Metropolitan committed an unfair labor practice when the District ended the long-term vehicle assignments for AFSCME's Executive President and Executive Vice President without providing AFSCME with notice and the opportunity to meet and confer. On January 16, the Legal Department filed a position statement seeking dismissal of the charge based on the District's compliance with District policy allowing the termination of vehicle assignments due to business need. A similar charge was filed on July 8, 2008 by the Supervisors Association, which PERB dismissed after Metropolitan filed a position statement. The Supervisors Association has appealed the dismissal, and the parties are waiting for a decision from PERB.



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

On December 22, 2008, AFSCME Local 1902 filed an unfair practice charge alleging that in July 2008 Metropolitan added new higher-level duties to the General Maintenance Assistant classification without providing Local 1902 with notice and the opportunity to meet and confer. On January 13, the Legal Department filed a position statement seeking dismissal of the charge on the basis that the challenged job duties properly fall within the parameters of the General Maintenance Assistant job description. On January 16, Local 1902 withdrew the charge, and PERB issued a notice of withdrawal and case closure. Accordingly, this matter is closed.

AFSCME Local 1902 v. Metropolitan (U.S. District Court)

On January 26, 2009, AFSCME Local 1902 filed a lawsuit in federal district court seeking injunctive and declaratory relief to prevent the disclosure of

certain e-mail records pursuant to a request made under California’s Public Records Act (CPRA). On September 29, 2008, former AFSCME Executive President Craig Brackbill made a request to Metropolitan under the CPRA seeking the 2008 e-mail records of two District employees, who represented Local 1902 during 2008. With one exception, Metropolitan informed Local 1902 on November 5, 2008 that the District would provide Mr. Brackbill with the requested e-mails in accordance with the CPRA and District policy relating to the CPRA. The one exception applied to any e-mail containing a confidential attorney-client communication between Local 1902 and its attorneys. Settlement discussions thereafter occurred between Mr. Brackbill and Local 1902. When those discussions reached an impasse without agreement, Local 1902 filed suit against Metropolitan in federal court. The Legal Department will defend Metropolitan’s interest in the lawsuit, including seeking a dismissal. The assigned judge is the Honorable Dale S. Fischer.

Matters Involving Metropolitan

Solano County Water Agency, et al. v. State of California Department of Water Resources (Sacramento Superior Court)

Metropolitan and 12 other state water contractors filed their motion to intervene in this action in support of Department of Water Resources (DWR) on January 30, 2009. This action was brought by four state water contractors located north of the Delta alleging that since they are located in the “area of origin” of SWP water they should not be subject to the shortage provisions of their state

water contracts. If plaintiffs are successful, there would be less water available to Metropolitan and other contractors during shortage years. Consequently, Metropolitan staff organized the other contractors to intervene, have met with DWR to plan a joint defense, and worked with outside counsel in preparation of the intervention documents. The motion is scheduled for hearing on February 25, 2009. (See General Counsel’s April, July and August 2008 Activity Reports)

Items of Interest

Finances

Metropolitan issued \$200 million in water revenue bonds on January 27, 2009, to provide funds for capital construction. Legal staff prepared the authorizing resolution adopted by the Board in August; updated Appendix A to the Official Statement, with input from group managers and Audit staff, to disclose material facts about Metropolitan to the bondholders; advised on legal issues; and coordinated

preparation and execution of the bond purchase contract and closing documents.

Administrative

The General Counsel has incorporated the detailed terms for phase-out of the Interim Agricultural Water Program (IAWP) into the Administrative Code, pursuant to the Board’s approval of these provisions in October. The October board letter provides for revision of the Administrative Code effective January 1 of each year to reflect lower maximum annual IAWP



deliveries. The annual updates also will reflect applicable reduction percentages for each year and other conforming changes authorized in the October board letter. The Code changes will be provided to agencies receiving IAWP water as part of a distribution that includes Reduction Guidelines and Frequently-Asked Questions explaining the IAWP phase-out. The Administrative Code, as updated from time to time, is available on the directors' Web site under "Reference" and on Metropolitan's Web site under "About MWD."

The law firm of Bergman and Dacey provided a program for the Legal Department on Ethics for the Savvy Lawyer. The program qualified for continuing legal education credit by the California State Bar for attorneys and paralegals.

Protocol for Responding to PRA Requests

Legal staff has developed a step-by-step procedure to standardize the method for responding to requests submitted under the Public Records Act, and to address the requirements to provide documents in electronic format. The procedure includes tracking every request and response in a master log, summarizing the documents reviewed, withheld and produced in a production tracking sheet, and completing forms that document the search criteria used to locate data kept on Metropolitan's computers. These steps help to demonstrate how documents and electronic data were gathered in order to provide a consistent response to similar requests, and to keep a history of steps taken should a response be challenged or need to be supplemented.