



Metropolitan Cases

The Metropolitan Water District of Southern California v. General Reinsurance Company (Los Angeles Superior Court)

Pursuant to authority granted by the Board of Directors in January 2009, Metropolitan filed a complaint in this matter on January 30, 2009 and served General Reinsurance Company (“Gen Re”) on February 11, 2009. The complaint alleges breach of contract, breach of the implied covenant of good faith and fair dealing, and seeks declaratory relief.

Since the filing of the complaint, Gen Re has substantially changed its position. Gen Re now admits responsibility to indemnify Metropolitan for 92.51% of its loss and claim expenses, although

Metropolitan maintains the position that it is due 100% indemnity.

It is now likely, in our estimation, that this matter will settle. However, under the modern delay-reduction rules in California’s civil courts, there is no practical way to stay a matter while the parties pursue settlement. Given that neither party wanted to needlessly incur litigation costs, we agreed to dismiss the lawsuit, without prejudice to our ability to refile, and executed a tolling agreement, which eliminates any potential statute of limitations issues that may arise from the dismissal.

Settlement discussions are ongoing. Meanwhile, based on its modified legal position, Gen Re did, in fact, pay Metropolitan \$94,468.50 on April 22, 2009.

Matters Involving Metropolitan

Delta Smelt Biological Opinion Litigation (San Luis & Delta Mendota Water Authority v. Salazar; State Water Contractors v. Salazar; Coalition for a Sustainable Delta v. U.S.F.W.S.; MWD v. U.S.F.W.S.) (U.S. District Court, Eastern District of California)

After a four-and-a-half-hour hearing on May 22, 2009, Judge Wanger orally granted the federal water contractors’ motion for a preliminary injunction in the Delta smelt BiOp case. The court found that the federal contractors were likely to succeed on their claim that the U.S. Fish & Wildlife Service (FWS) violated NEPA by not considering the environmental impacts that BiOp restrictions on exports would have in the federal contractors’ service area. The environmental impacts that were not considered include land fallowing, increased groundwater pumping to make up for reductions in water supply, subsidence of land as a result of increased groundwater pumping, air quality

impacts from fallowing land, loss of trees and permanent crops, unemployment in the agricultural industry, and attendant problems from unemployment. The preliminary injunction requires the FWS to take into account these environmental impacts when the FWS makes determinations about export level for the projects. The preliminary injunction also directs the FWS to provide more detailed explanations when it imposes more severe export restrictions. The preliminary injunction does not itself set any particular level of exports but requires FWS to take into consideration certain NEPA-based factors and to provide greater explanations why certain export levels are selected. The preliminary injunction will remain in effect until the end of June 2009 when the Old and Middle Rivers’ flow restrictions will end. The water supply benefits of the preliminary injunction are unclear and uncertain at this point. (See General Counsel’s February and April 2009 Activity Report)



Cases to Watch

***In re Tronox, Inc.* (U.S. Bankruptcy Court, So. Dist. of N.Y.)**

In January 2009, Tronox, Inc. filed a petition in bankruptcy court for chapter 11 reorganization. Tronox contends that it cannot cope with the environmental and litigation liabilities of its former parent corporation, Kerr McGee Corp. Kerr McGee was owner and operator of defense industrial sites in Henderson, Nevada that were responsible for perchlorate contamination affecting the Colorado River Aqueduct. Metropolitan was heavily involved in negotiations that resulted in an Order from the Nevada Department of Environmental Protection for comprehensive cleanup of the perchlorate plume, which had been advancing toward the Las Vegas Wash and Lake Mead. The cleanup project has been proceeding successfully but must continue to contain the plume of contamination.

Tronox has asked the court to set a deadline of August 12, 2009 for submitting claims against it. On May 12, 2009, Tronox filed an adversary complaint with the bankruptcy court against Kerr McGee and Anadarko Petroleum Corporation. The complaint alleges that the two corporations fraudulently dumped their environmental and other liabilities upon Tronox and misled potential investors about the size of these liabilities. Tronox asserts claims including fraudulent transfer, civil conspiracy, aiding and abetting fraudulent conveyance, breach of fiduciary duty, and unjust enrichment. Tronox asks the bankruptcy court to award damages and restitution as a result of defendants' wrongdoing.

Metropolitan's primary interest in this case is ensuring that the perchlorate cleanup project continue until completed. The Legal Department has been monitoring these proceedings and coordinating with the Southern Nevada Water Authority and Nevada Attorney General's Office. Additionally, the Legal Department will take any available action to recoup actual perchlorate cleanup costs that Metropolitan may incur in the future, notwithstanding the possibility that the proceedings will discharge future monetary claims. The question of potential cross-claims against Tronox has arisen in the *OCWD v. Northrop* case.

Pending further analysis and with the probable assistance of outside counsel, the General Counsel's Office expects to file proofs of claims in

the bankruptcy court prior to the court-ordered deadline. The General Counsel's Office will assess all options for participating in these proceedings, including potential creditors' committees and reorganization plans. The primary objective of Metropolitan's participation in these proceedings is to ensure that a viable entity and funding remains to complete the perchlorate cleanup project in Henderson.

National Marine Fisheries Proposed "Take" Regulation for North American Green Sturgeon

On May 21, 2009, the National Marine Fisheries Service (NMFS) proposed to adopt a section 4(d) rule under the Endangered Species Act (ESA) applying the ESA "take" prohibitions to the North American Green Sturgeon. NMFS listed the green sturgeon as a threatened species in April 2006. The ESA section 9 take prohibition does not automatically apply to threatened species; however, section 4(d) allows NMFS to apply the prohibition to threatened species and it invariably does so. The proposed rule includes the existence and operation of dams and water diversion structures and entrainment and impingement at such facilities as activities that likely impact green sturgeon. NMFS' proposal was expected and the green sturgeon already is being considered (along with the salmon and steelhead) in the current section 7 consultations with NMFS aimed at getting an incidental take authorization for CVP and SWP operations. Existing restrictions on project operations for the benefit of other listed species also will protect the green sturgeon and it is unclear whether additional restrictions and impacts on project operations will result from the consultations. Metropolitan and other state water contractors are reviewing the notice and evaluating whether to submit comments by the July 20, 2009 deadline. (NMFS has been separately considering whether to designate critical habitat for the green sturgeon by June 30, 2009; See General Counsel's September 2008 Monthly Activity Report)



Items of Interest

DWR/USBR Petition for Temporary Joint Place of Use

On May 19, 2009, the SWRCB approved the petition filed by DWR and USBR requesting a temporary change in the place of use for the SWP and CVP, respectively. The SWRCB's order granting the request provides that during 2009 and 2010 each project is authorized to deliver transfer or exchange water originating from one project into the service area of the other project. The change primarily increases flexibility and overcomes administrative bottlenecks in the system created by the rules for delivering water to the two systems' individual service areas. For example, allowing CVP water to be delivered to the SWP service area and vice versa will allow increased return of water stored in groundwater programs via exchanges, increasing water supplies available in 2009 and 2010 without increasing exports from the Delta. These types of transactions could also supply water quality benefits to Metropolitan to the extent Metropolitan's SWP water is delivered to CVP service areas in exchange for return of higher quality San Joaquin River water.

Finances

Legal Department attorneys worked with outside bond counsel on the legal analysis, bond documents and disclosure for Metropolitan's \$208,365,000 Water Revenue Refunding Bonds, 2009 Series A-1 and A-2, issued on May 20, 2009. These variable rate bonds were structured as qualifying investments for money market funds. They bear interest at a rate that fluctuates weekly based on the SIFMA Municipal Swap Index published weekly by Municipal Market Data. The bond owners must tender their bonds back to Metropolitan in one year, or earlier at Metropolitan's call, for remarketing in their current interest mode, conversion to fixed rate bonds or another interest mode, or refunding. Crafting this new, highly flexible structure presented challenges to the legal team that were intensified by the short schedule.

These bonds refunded Metropolitan's \$221,970,000 Water Revenue Refunding Bonds, 2003 Series C-1 and C-2, that were supported by a standby bond purchase agreement with

Dexia Credit Local that expires June 30, 2009. The new structure for the 2009 Series A-1 and A-2 bonds enabled their sale without a standby bond purchase agreement or other liquidity facility. Proceeds of a fixed rate bond issue scheduled for June 10 will redeem a third series of bonds supported by the Dexia standby agreement, the \$110,985,000 Water Revenue Refunding Bonds, 2003 Series C-3. These fixed rate bonds also will redeem the \$88,800,000 Water Revenue Bonds, 2000 authorization, Series A-1 that are supported by a standby bond purchase agreement with West LB AG that terminates on July 15, 2009.