



Metropolitan Cases

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

On February 27, 2008, AFSCME filed a PERB unfair practice charge alleging Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by purportedly discriminating against and interfering with an employee's protected concerted activity. In July 2008, PERB 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. In August 2008, the parties held an informal conference before PERB, but were unable to resolve the matter. In January 2009, the parties conducted a two-day formal hearing (an administrative trial) before a PERB Administrative Law Judge (ALJ), and presented witnesses and documentary evidence.

On June 10, 2009, the ALJ issued his decision, finding in Metropolitan's favor on all grounds and ordering the complaint dismissed. The ALJ concluded that the employee had not engaged in

protected activity and that Metropolitan acted lawfully. The ALJ also found that there was no evidence of disparate treatment, procedural irregularities, or anti-union animus to suggest that Metropolitan acted with an unlawful motive.

AFSCME has the right to appeal the decision. The Legal Department has represented Metropolitan in this matter. (See General Counsel's January and March 2009 Activity Reports)

Jena Minor v. Metropolitan (Los Angeles County Superior Court)

On June 23, 2009, Metropolitan employee Jena Minor filed a complaint in Los Angeles County Superior Court against Metropolitan. Plaintiff alleged one cause of action: unlawful retaliation in violation of the Fair Employment and Housing Act, for having engaged in the protected activity of complaining about gender and race discrimination and sexual harassment, and for having complained about retaliation. The Legal Department is providing legal representation for Metropolitan in this case.

Matters Involving Metropolitan

San Luis & Delta Mendota Water Authority v. Locke (U.S. District Court, Eastern District of California)

Stockton East Water District v. U.S. National Oceanic and Atmospheric Administration (U.S. District Court, Eastern District of California)

On June 15, 2009, the San Luis & Delta Mendota Water Authority and Westlands Water District filed suit in federal district court challenging the new salmon Biological Opinion. On June 19, 2009, the Stockton East Water District also filed a federal court complaint challenging the salmon Biological Opinion. The two complaints raise a variety of claims under the Endangered Species Act, National Environmental Policy Act, Administrative Procedure Act and other laws, challenging the scientific conclusions and findings, and the Reasonable and Prudent Alternatives in the Biological Opinion. Both cases have been

assigned to Judge Wanger. The State Water Contractors and other individual contractors, including Metropolitan, are studying the salmon Biological Opinion and are considering filing their own lawsuits challenging the Biological Opinion.

U.S. Fish and Wildlife Decision Not to List the San Francisco Bay-Delta Population of Longfin Smelt as an Endangered Species

The United States Fish and Wildlife Service (USFWS) has determined that the San Francisco Bay-Delta (Bay-Delta) longfin smelt population is not a "distinct population segment" (DPS) that qualifies for listing under the Endangered Species Act (FESA). The longfin smelt is relatively numerous within its full range in estuaries and rivers from Alaska to the Bay-Delta. However, FESA authorizes USFWS to list a subpopulation as threatened or endangered if it meets the criteria as a DPS and is otherwise qualified to be listed. In



August 2007, the Bay Institute, Center for Biological Diversity and Natural Resources Defense Council petitioned USFWS to list the Bay-Delta DPS as endangered, and USFWS initiated a status review of the population to determine whether the Bay-Delta population qualified as a DPS. USFWS determined that the Bay-Delta population is not geographically isolated from other west coast longfin populations and is not markedly different from those populations. Therefore, the Bay-Delta longfin smelt population does not meet the discreteness criterion to qualify as a DPS and “is not a listable entity under” FESA. USFWS will, however, initiate a status assessment of the longfin to gather additional data regarding the fish throughout its range. As described below, the longfin smelt is listed under the California Endangered Species Act.

California Fish and Game Commission Decision to List the Longfin Smelt as a Threatened Species

On June 25, 2009, California’s Fish and Game Commission (Commission) decided to list the longfin smelt as a threatened species under the California Endangered Species Act. In August 2007, the Commission received a petition to list the longfin smelt and directed the Department of Fish and Game (Department) to evaluate the status of the species. Based on its review, the Department recommended in February 2009 that the Commission list the longfin as a threatened species. At its March 2009 meeting, the Commission found that the petition to list the longfin smelt was warranted and at its June 25 meeting formally adopted a regulation listing it as threatened. Under CESA, once the Commission accepts a petition to evaluate whether to list a species (as it did in February 2008), it is considered a “candidate” for listing and the CESA take probation applies to the species. Therefore, in February 2009 the Department of Water Resources obtained an incidental take permit

allowing it to operate the State Water Project, subject to restrictions, even though Project operations incidentally take the longfin. The Commission’s decision to formally list the longfin smelt is not expected to change the requirements of the existing incidental take authorization.

State Water Resources Control Board Proceedings to Review the Bay-Delta Water Quality Control Plan

The State Water Resources Control Board (SWRCB) issued a draft “staff report” recommending which issues SWRCB should consider in its upcoming review of the Bay-Delta Water Quality Control Plan (WQCP). SWRCB will consider adopting the report as a basis for which elements in the WQCP will be amended and whether any new elements should be added. The State Water Contractors (SWC) submitted comments to the staff report on June 15, 2009 agreeing with the elements recommended, but disagreeing on critical issues the SWRCB staff report proposed to ignore. In particular, the staff report proposes that SWRCB should not take up the issue of the impacts of ammonia and toxicity in Delta waters on fish and wildlife at this time. In addition, the SWC comments pointed out the staff report did not appear to acknowledge SWRCB’s duty to balance competing uses of water to reach “reasonable” objectives and presented a selective summary of the current state of science to support its recommendations, which is not appropriate in this document that sets the stage for hearings with the express purpose of establishing a full record of current knowledge. The SWC recommended that SWRCB adopt the staff report’s proposed issues, adding the ammonia and toxicity issues as well, but not adopt the accompanying incomplete and unnecessary information. The SWRCB will consider the written comments and oral presentations at a July 7, 2009 hearing where it will consider adopting the staff report.



Items of Interest

Finances

Legal Department attorneys worked with outside bond counsel on the legal analysis, bond documents and disclosure for four series of water revenue bonds totaling \$297,855,000 issued in June. One series was issued as “Build America Bonds” under the American Recovery and Reinvestment Act of 2009. One hundred million dollars of the new bonds, including the Build America Bonds, will provide funding for capital improvement projects. Interest on Build America Bonds is taxable income to the bondholders under federal tax laws, and thus is at a higher rate than on comparable tax-exempt bonds, but the economic stimulus legislation provides a direct subsidy from the federal government to the bond issuer equal to 35% of the interest cost.

These fixed rate bonds also redeemed Metropolitan’s \$110,985,000 Water Revenue Refunding Bonds, 2003 Series C-3 that were supported by a standby bond purchase agreement with Dexia Credit Local expiring on June 30, 2009, and \$88,800,000 Water Revenue Bonds, 2000 Authorization, Series A-1 that were supported by a standby bond purchase agreement with West LB AG (one of the German Landesbanks that were recently downgraded) terminating on July 15, 2009.

Administrative

Legal staff participated in a LexisNexis Update training session that focused on new features for conducting online legal research. The training, which was provided by LexisNexis staff, provided continuing legal education credit for attorneys and paralegals.