



Metropolitan Cases

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

Central Basin Municipal Water District filed a Request for Dismissal of this litigation “with prejudice” on July 23, 2009, formally ending its litigation over Metropolitan’s Water Supply Allocation Plan (WSAP). As previously reported, Metropolitan obtained an order from the trial court dismissing several causes of action challenging the WSAP. Central Basin subsequently dismissed the remaining claims “without prejudice.” Central Basin indicated it intended to appeal the court’s dismissal of some of the causes of action, and its dismissal *without* prejudice would have allowed it to refile the claims it had voluntarily dismissed. Metropolitan and Central Basin reached a settlement agreement, approved by Metropolitan’s Board at its April 14 meeting, that was conditioned on Central Basin filing a dismissal *with* prejudice. A dismissal with prejudice prohibits Central Basin from attempting to refile litigation based on the same matter and from pursuing an appeal on the matter dismissed. (See General Counsel’s January 2009 Activity Report)

AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)

In October 2008, Metropolitan discharged an employee based on misconduct associated with timekeeping records. In response, AFSCME Local 1902 filed an appeal challenging the discharge. Hearing Officer David B. Hart presided over the hearing and issued a July 30, 2009 decision upholding the termination. The decision notes Management effectively documented the basis for the disciplinary action, including the level of discipline imposed. Consequently, Mr. Hart rejected Local 1902’s claim of disparate treatment and allegation of lax enforcement of work schedules. The Legal Department represented Metropolitan at the hearing.

AFSCME Local 1902 v. Metropolitan (Hearing Officer Appeal)

In February 1999, six System Operators submitted a request to Human Resources for job audits pursuant to AFSCME Local 1902’s MOU. The

System Operators believe that over time their duties expanded to the point where they performed a majority of the significant duties of the Assistant Chief System Operator and/or Chief System Operator, and they sought retroactive promotions as a result. Human Resources’ determination that the employees are appropriately classified as System Operators resulted in grievances, which were denied. Also, Local 1902 filed a grievance in April 2004 alleging all System Operators are entitled to a temporary promotion pursuant to the MOU. WSO Management denied this grievance, but noted that Human Resources agreed to conduct a classification study. During this study, Human Resources and Management agreed to reevaluate the original 1999 job audit requests, and determined once again in June 2006 that the six operators should remain as classified. This result was likewise grieved and the grievances were denied. The denied grievances were all appealed to a hearing officer.

On July 4, 2009, Hearing Officer Bonnie Prouty Castrey issued her decision granting the grievances. As a remedy, Ms. Castrey awarded retroactive temporary promotions to the Assistant Chief System Operator classification for four of the employees who requested job audits in 1999. In addition, Ms. Castrey remanded the 2004 grievance back to the parties for a full investigation of the facts as they existed back in 2004, to be done in a manner consistent with her findings in connection with the 1999 job audits. Currently, Management is reviewing its options with the Legal Department and the outside counsel who represented Metropolitan at the hearing.

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 (FEHA) 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 the case. The Legal Department has retained an outside investigator who is

investigating the allegations. (See General Counsel's June 2009 Activity Report)

Matters Involving Metropolitan

In re Tronox, Inc. (U.S. Bankruptcy Court, So. Dist. of N.Y. Case No. 09-10156 (ALG), Chapter 11 Reorganization)

Tronox is a spin-off entity created by Kerr-McGee, the firm that operated the facility at Henderson, Nevada where there is a variety of contamination, including the perchlorate contamination that goes into the Colorado River at Las Vegas wash.

Prior to its separation from Kerr-McGee, all of Kerr-McGee's environmental clean-up obligations were transferred to Tronox. In January 2009, Tronox filed for bankruptcy claiming, in part, that the costs of the environmental obligations were understated and underfunded by Kerr-McGee when they were transferred to Tronox.

Kerr-McGee and then Tronox have operated a bio-remediation process that has reduced the level of perchlorate in Las Vegas Wash from 16-17 ppb in 1997 to 2-2.6 ppb currently. If there was a sustained interruption in the treatment process, experts agree that the level of perchlorate in the river would increase to the 1997 levels over time. The cost of this remediation is approximately \$500,000 per month.

Metropolitan, the Southern Nevada Water Authority (SNWA) and the Central Arizona Water Conservation District (CAWCD) are each filing claims in the bankruptcy for potential damages that they may incur in the event that the remediation process is interrupted, resulting in increased levels of contamination in the river and potential costs of remediation. The intent of the claims is to both protect the agencies' financial interests and, more importantly, to ensure that the court does not take any action that would jeopardize the ongoing remediation process.

In addition, Metropolitan's claim includes potential liability asserted against Metropolitan in two other pending actions. In *Orange County Water District v. Northrop Corporation*, Orange County Superior Court Case No. 04CC00715, OCWD sued Northrop for contamination by volatile organic compounds (VOCs) of its Forebay groundwater basin. Northrop filed a cross-complaint against Metropolitan alleging that Metropolitan has liability

for contamination of the basin with perchlorate due to the delivery of Colorado River water that was stored in the basin.

San Gabriel Valley Water Quality Authority v. Aerojet-General Corporation, et al., USDC-CD Case No. CV 02-4565 relates to the South El Monte Operable Unit of the San Gabriel Valley Superfund Site (SEMOU). Certain of the defendants in this case filed a complaint against Metropolitan for contribution to the contamination of SEMOU due to the delivery and use of Colorado River water to recharge the groundwater basin underlying the SEMOU.

Water Right and Public Trust Complaints Against Certain Delta Diverters

The State Water Contractors, San Luis & Delta-Mendota Water Authority and Modesto Irrigation (Complainants) filed complaints against three Delta water diverters with the State Water Resources Control Board (SWRCB) in July. The complaints allege that the named diverters are diverting water from the Delta without authorization and in violation of any recognizable or enforceable legal right to the water. Complainants have been investigating the water rights of diverters in the South Delta for several months and have discovered evidence indicating that many of them are diverting water without any identifiable water right, or in excess of their claimed water right. These diversions can reduce the water available for export by the State Water Project (SWP) and Central Valley Project (CVP) under their water rights; reduce instream flows needed to meet SWRCB outflow requirements; entrain Delta smelt and other listed species; and result in discharge of highly saline water, hampering the SWP's and CVP's efforts to meet salinity objectives. The Complainants request SWRCB to review the rights of the named diverters, order them to cease diverting in excess of their rights and require them to monitor and report the timing and quality of their diversions. It is likely that Complainants will file subsequent complaints against other diverters as a result of their investigations.



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

On July 7, 2009, the State Water Contractors (SWC) joined several other parties commenting on SWRCB staff's draft "Staff Report" proposing how the SWRCB should approach review of the 2006 Water Quality Control Plan. The SWC's written and oral comments agreed with the elements in the plan recommended for review; disagreed with the SWRCB staff proposal to not take up the issue of ammonia and toxicity impacts on fish and wildlife; pointed out that the Staff Report did not acknowledge the SWRCB's duty to balance competing uses of water to reach "reasonable" objectives; and pointed out that the Staff Report presented a selective summary of the current state of science, 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 SWRCB has made some revisions in the draft report and will consider adopting the Staff Report at its August 4, 2009 meeting. SWC intends to participate in the meeting.

Additionally, SWRCB has released an analysis of the salt tolerance of crops grown in the South Delta and the salinity objectives needed to protect the yields of those crops. The report was prepared by Dr. Glenn J. Hoffman, an independent expert in the field commissioned by SWRCB. SWRCB's Water Quality Control Plan contains salinity objectives in the South Delta to protect the quality of water available to the farmers in that area. Many, including DWR, USBR and state and federal water contractors, have long contended that certain of the objectives are more protective than are necessary to protect the yields of the crops grown in the Delta. Attempting to meet the objectives causes significant reductions in SWP and CVP water supply that otherwise could be available for the projects' customers. Dr. Hoffman's report indicates that the salinity objectives could be relaxed while still protecting all of the crops normally grown in the South Delta. SWRCB has scheduled workshops on September 14 and November 4, 2009 where Dr. Hoffman and SWRCB staff will orally present this report. Metropolitan staff, along with other SWC staff, are reviewing the report and preparing comments for submittal at, and preparing to participate in, the workshops.

California Department of Fish and Game CESA Consistency Determination

On July 17, 2009, the California Department of Fish and Game (DFG) issued a "consistency determination" under the California Endangered Species Act (CESA) which authorizes the incidental take of Delta smelt by the SWP. As previously reported, the United States Fish and Wildlife Service (Service) issued a biological opinion and incidental take statement under the Federal Endangered Species Act (FESA) which authorizes the incidental take of Delta smelt by the SWP. The CESA consistency determination process allows one to utilize a federal biological opinion and incidental take statement as a basis for obtaining CESA incidental take authorization. This is a more streamlined regulatory process than seeking a CESA section 2081 incidental take permit. In addition to the consistency determination for Delta smelt, we understand that DWR may seek a CESA consistency determination for the incidental take of salmon based on the recent federal biological opinion.

These consistency determinations may provide a basis for dismissing the pending appeal in the *Watershed Enforcers* case. The issue in that case is whether DWR obtained valid CESA incidental take authorization for the SWP based on certain older memoranda of understanding and agreements. If DWR obtains new CESA incidental take authorization based on consistency determinations for Delta smelt and salmon, the issue of whether DWR had prior CESA authorization under earlier agreements may be a moot controversy. A complicating factor in the use of consistency determinations for CESA incidental take authorization is that there are pending lawsuits challenging the validity of the federal biological opinions for Delta smelt and salmon. If these lawsuits succeed and the federal biological opinions are invalidated, it would necessitate obtaining new CESA incidental take authorization to replace that afforded by the consistency determinations. The SWC, including Metropolitan, are attentive to this issue and are planning for this possibility.