



## Metropolitan Cases

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

On November 24, 2009, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) and PERB regulations on October 12, 2009, by withdrawing presentation of the negotiated tentative agreements from the Board agenda scheduled for October 13, 2009. The Charge seeks an order requiring the District: (1) to meet and confer in good faith; (2) to present and recommend the negotiated tentative MOUs to the Board for approval; and, (3) to post a notice informing District employees of PERB's decision. Metropolitan will oppose the charge on the basis that an examination of the totality of the circumstances will demonstrate Metropolitan did not violate the law.. Legal Department staff will represent Metropolitan in this matter.

### ***AFSCME Local 1902 v. Metropolitan (MOU Hearing Officer Appeal)***

On November 6, 2009, Hearing Officer Robert Bergeson issued his decision in response to an appeal challenging Metropolitan's denial of a grievance. The AFSCME grievance sought to reverse the outcome of a job audit, performed by Human Resources that concluded the grievant should remain classified as an Administrative Analyst. At the hearing, AFSCME failed to meet its burden of establishing a violation of the AFSCME MOU. Accordingly, Mr. Bergeson upheld Metropolitan's denial of the grievance, and in so doing determined the grievant has been correctly classified as an Administrative Analyst for the relevant time period. Legal Department staff represented Metropolitan in this matter.

### ***Metropolitan v. Employment Development Department (Unemployment Insurance Benefits Appeal)***

On November 4, 2009, Administrative Law Judge Dan H. Burcham issued his decision in response to an appeal by Metropolitan challenging the Employment Development Department's (EDD) grant of unemployment insurance benefits. The EDD granted benefits based on its determination

that a former employee resigned his employment based on a "mutual mistake." Judge Burcham first held that good cause existed to excuse Metropolitan's late appeal because EDD's determination was vague, and because Metropolitan could not obtain a clarification by telephone. Judge Burcham then held the claimant voluntarily quit his employment by moving across the country to reduce his personal expenses. Accordingly, Judge Burcham granted Metropolitan's appeal by reversing the EDD's determination. Legal Department staff represented Metropolitan in this matter.

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

On October 28, 2009, AFSCME sent correspondence to PERB withdrawing its charge that Metropolitan committed an unfair labor practice when Management 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. The charge was filed on December 19, 2008. On January 16, 2009, the Legal Department filed a position statement seeking dismissal of the charge based on the District's compliance with internal policy authorizing the termination of vehicle assignments due to business need. Following AFSCME's withdrawal of the charge, PERB closed its file in this matter.

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 appealed the dismissal, and on August 26, 2009, the full PERB Board upheld the dismissal. Legal Department staff represented Metropolitan in both matters. (See General Counsel's August 2009 Activity Report.)

### ***Colorado River QSA Coordinated Cases (Sacramento Superior Court)***

As previously reported, this litigation consists of three sub-phases: Phase 1A addresses the validity of the Quantification Settlement Agreement (QSA) and 13 related agreements; Phase 1B addresses CEQA claims related to the QSA



Programmatic Environmental Impact Report (EIR); Phase 1C addresses CEQA claims related to the Imperial Irrigation District (IID) / San Diego County Water Authority (SDCWA) Transfer Project EIR. Phase 1A commenced on November 9 and will conclude on December 2, with a total of 11 trial days divided evenly between the Category 1 parties (QSA supporters) and the Category 2 parties (QSA opponents). Each side was allotted three days to present its “prima facie” (opening) case, two days for rebuttal, and a half-day for closing argument. The Category 1 parties went first, with IID taking the lead and Metropolitan, SDCWA, Coachella Valley Water District and the State providing support as needed. The Category 2 parties went next, with Cuatro Del Mar, the County of Imperial, Imperial County Air Pollution Control District (ICAPCD) and two landowner groups all making separate presentations.

Both sides used a substantial portion of their allotted time to address the constitutionality of the funding commitments made by the State for environmental mitigation and restoration costs,

especially as they relate to the Salton Sea. This subject clearly was of the most interest to the court, which actively questioned both sides during their presentations. Other issues addressed by the parties included whether IID was required to allocate its portion of Colorado River water to individual landowners and then seek their permission before transferring this water outside the district, and whether IID committed various procedural errors in approving the QSA. ICAPCD also tried to present certain CEQA issues during this phase, but the court held that doing so violated its scheduling order.

Phase 1B is scheduled for December 14 through 18 and Phase 1C is scheduled to start on January 4, 2010 and conclude by January 26, 2010. Any remaining unresolved claims or issues will be tried in subsequent phases, which have not yet been scheduled. (See General Counsel’s September and October 2009 Monthly Activity Reports.)

## Cases to Watch

***Center for Biological Diversity v. Salazar* (U.S. District Court, Eastern District of California, Case No. 2:09-CV-03154-GEB/GGH)**

This is a legal challenge to the United States Fish and Wildlife Service’s (“FWS”) apparent failure to make a determination regarding whether to uplist the delta smelt from “threatened” to “endangered.” The complaint alleges that it has been 44 months since the petition to uplist was filed, thus the FWS failed to perform a non-discretionary duty to make a determination within 12 months. The petitioners are seeking a court order directing the FWS to make a decision by a date certain.

***Center for Biological Diversity v. Salazar* (U.S. District Court, Eastern District of California, Case No. 3:09-CV-05370-MHP)**

This is another legal challenge to the FWS’ determination that the longfin smelt that reside in the San Francisco Bay-Delta are not a “distinct population segment.” The petition alleges that the FWS ignored the best available science and requests that the FWS’ decision be remanded back to the agency for reconsideration.

## Items of Interest

**Finances**

On December 1 Metropolitan executed bond purchase agreements with the underwriters for \$26,050,000 Water Revenue Refunding Bonds, 2009 Series E, and \$45,515,000 Waterworks General Obligation Refunding Bonds, 2009 Series A. Both series of bonds are being issued for debt service savings. The 2009 Series E Bonds also will replace variable rate bonds supported by a

Lloyds TSB Bank standby bond purchase agreement expiring at the end of December with fixed rate bonds. Legal Department staff prepared the Official Statement for the 2009 Series A bonds and Appendix A for both bond issues and assisted Finance staff and outside bond counsel with the transaction. Sale of the 2009 Series E bonds will close December 10. The closing for the 2009 Series A bonds will be December 22.