



## Metropolitan Cases

### ***Alameda County Flood Control & Water Conservation District, Zone 7, et al. v. California Department of Water Resources (Sacramento County Superior Court)***

On August 21, 2009, the court issued a tentative decision in favor of the Department of Water Resources (DWR) and the intervenors, which includes Metropolitan. The court rejected all of the arguments made by the plaintiffs challenging the manner in which revenues from the Hyatt-Thermalito (H-T) power complex have been and are being allocated. On September 14, the court affirmed its tentative decisions with no changes. On September 24, DWR and intervenors submitted a proposed Statement of Decision that tracked verbatim the court's decision. DWR and intervenors also submitted a proposed Judgment dismissing plaintiffs' entire First Amended Complaint (FAC).

On October 16, 2009, the court approved the proposed Statement of Decision with no changes. However, the court rejected the proposed Judgment, finding that additional procedural steps needed to be taken before a judgment could be entered on all causes of action raised in the FAC. Instead, the court issued a proposed Interlocutory Judgment holding that: (1) Article 22(a) of the State Water Contract does not mandate that full market value of H-T power be reflected in a credit toward the Delta Water Charge (DWC); and (2) DWR's resale of H-T power after purchasing it under the State Power Contract does not constitute a sale or other disposal of power that must be credited toward the DWC. That interlocutory judgment was affirmed on November 2.

On December 10, 2009, the court held a Case Management Conference to determine how best to proceed. At that hearing, plaintiffs asserted that the court's Decision and Interlocutory Judgment related solely to their claim for declaratory relief and that the other causes of action asserted in their FAC were still viable. The court expressed skepticism at this assertion and ultimately directed DWR and intervenors to file a Motion for Judgment on the Pleadings by February 2, 2010. Opposition and Reply briefs are due on February 16 and March 2, respectively. The hearing on this Motion

is scheduled for April 9. If this Motion is granted, the court then will enter a final judgment dismissing the entire FAC.

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

On April 23, 2008, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan. The charge alleges Metropolitan violated the Myers-Milias-Brown Act (MMBA) by refusing to process nine grievances containing allegations that could be construed as unfair practice allegations under PERB laws and regulations. On May 14, 2008, Metropolitan filed a position statement with PERB stating the charge lacks merit because the Legislature, via a 2001 amendment to the MMBA, vested PERB with exclusive jurisdiction over the resolution of disputes alleging unfair practices. (Gov. Code Section 3509 (b).) Accordingly, Metropolitan maintained that it properly refused to process grievances containing unfair practice charges. By letter dated December 1, 2009, PERB informed Metropolitan that AFSCME elected to withdraw its charge and, consequently, PERB closed this case. The Legal Department represented Metropolitan in this matter.

### ***Lollett Jones-Boyce v. Metropolitan (Public Employment Relations Board)***

On November 28, 2007, Ms. Jones-Boyce filed an unfair practice charge alleging Metropolitan violated the MMBA by placing her on paid administrative leave and later terminating her employment and health benefits in retaliation for her "exercising rights guaranteed under the MMBA." Ms. Jones-Boyce's employment ended on November 5, 2007, pursuant to the terms of a board-approved Confidential Settlement Agreement signed on April 20, 2007. PERB's board agent dismissed the charge on October 17, 2008, for failure to state a prima facie case of retaliation. The agent determined Ms. Jones-Boyce did not engage in protected activity and that the District's actions in implementing the settlement agreement are not adverse actions under the MMBA. The full PERB board affirmed the board agent's dismissal on September 29,



2009. Thereafter, Ms. Jones-Boyce requested reconsideration. On December 30, 2009, the board denied that request. The Legal Department represented Metropolitan in this matter. (*Metropolitan Water District of Southern California* (Sept. 29, 2009) PERB Decision No. 2066-M.) (See General Counsel's September 2009 Monthly Activity Report)

***Andrew James Ellsworth, Jr. v. Metropolitan, et al.* (Los Angeles County Superior Court)**

On September 8, 2009, Metropolitan employee Andrew Ellsworth filed a complaint in Los Angeles County Superior Court against Metropolitan and four employees. Plaintiff alleged eight causes of action: discrimination based on race, national origin, ancestry, and age in violation of the Fair Employment and Housing Act (FEHA); wrongful failure to promote in violation of public policy; harassment based on race, national origin, ancestry, and age in violation of FEHA; retaliation for opposing discrimination and harassment in violation of FEHA; disability discrimination and

failure to accommodate in violation of FEHA; failure to engage in the interactive process in violation of FEHA; failure to prevent harassment, discrimination, and retaliation in violation of FEHA; and defamation. All causes of action are asserted against Metropolitan, and the harassment and defamation causes of action are also asserted against the individual defendants.

Metropolitan filed a demurrer to the wrongful failure to promote claim on November 4, 2009, which is set for hearing on February 1, 2010. On December 15, 2009, plaintiff filed a motion for leave to supplement the complaint to assert additional allegations, which also is set for hearing on February 1, 2010. Metropolitan's Legal Department is providing legal representation for all defendants in the case, and it has retained an outside investigator who is investigating the allegations. Metropolitan has initiated discovery to plaintiff. The first Case Management Conference is scheduled for January 11, 2010. (See General Counsel's September and October 2009 Activity Reports)

## **Matters Involving Metropolitan**

***Butte Environmental Council v. California Department of Water Resources* (Alameda Superior Court)**

On April 13, 2009, Butte Environmental Council, the California Sportfishing Protection Alliance and California Water Impact Network (petitioners) filed suit in Alameda Superior Court challenging the implementation of the 2009 Drought Water Bank. The complaint alleges that the DWR and state officials failed to comply with CEQA in approving the Drought Water Bank. Initially, over 80 potential buyers and sellers, including Metropolitan, were named as Real Parties in Interest. However, many of these parties have no involvement or interest in the Drought Water Bank and now have been dismissed.

On August 25, 2009, DWR filed a demurrer (motion to dismiss) to the complaint on the grounds that the Drought Water Bank was exempt from CEQA pursuant to the Governor's Drought Declaration. On November 2, the court denied the demurrer. Although, the court agreed that the Governor has the power to suspend any regulatory statute "where the governor determines and declares that strict compliance with a statute or order would prevent, hinder or delay the mitigation

of the effect of the emergency," the court concluded that the Drought Declaration did not do that.

On October 22, 2009, various State Water Project and Central Valley Project contractors, including Metropolitan, filed a joint motion to dismiss on the grounds that the lawsuit was moot, since all deliveries from the 2009 Drought Water Bank had been made and no drought water bank was planned for 2010. A hearing on this motion was held on November 17, 2009, after which the Court took the matter under submission.

Pending a decision on this motion to dismiss, the parties have been preparing for trial. On November 20, 2009, DWR certified and served the administrative record. On November 24, petitioners filed their Opening Brief on the merits. In late December, DWR and the Real Parties in Interest filed their Answers to Petitioners' Complaint, as well as their Opposition Briefs. In addition, the parties filed Statements of Issues for trial. The petitioners' Reply Brief is due on January 14 and the trial on the merits is scheduled for January 25. (See General Counsel's September 2009 Monthly Activity Report)



***California Energy Commission (CEC) v. U.S. Dept. of Energy (U.S. Court of Appeals, Ninth Circuit)***

In late 2009, the Ninth Circuit overruled the federal government's denial of California's request to enforce increased efficiency standards for residential clothes washers. Residential clothes washers account for about 22 percent of water use in a typical household. In 2002, the California Legislature required the CEC to establish such water efficiency standards. The federal Energy Policy and Conservation Act (EPCA) requires states to obtain a waiver of federal preemption before they can adopt energy and water efficiency standards more stringent than federal requirements. In 2006, the U.S. Dept. of Energy (USDOE) rejected California's waiver request.

One ground for its denial was, "the CEC had not established ... that the State of California has unusual and compelling water interests," as required by the EPCA. Metropolitan participated as *amicus* in the appeal to the Ninth Circuit, pointing out that several factors have threatened the reliability of its imported water supplies; that water conservation is a cornerstone of Southern California's strategy for long-term reliability; and that increased residential clothes washer efficiency is necessary to secure Southern California's water future. The court ruled that USDOE's denial of the waiver request was arbitrary and capricious, because (among other reasons) it ignored evidence in CEC's application of net economic benefits of increased standards. The court sent the matter back to USDOE to reconsider CEC's waiver request consistent with the court's opinion.

## Items of Interest

### Annual Information Filing

Legal Department staff posted Metropolitan's annual financial information filings for fiscal year 2008-09, pursuant to continuing disclosure requirements for outstanding bond issues. For the first time, these filings were posted on the new Electronic Municipal Market Access (EMMA) system established in 2009 by the Municipal Securities Rulemaking Board.

### Finances

The first remarketing of Metropolitan's Water Revenue Refunding Bonds, 2009 Series A-2, will occur on January 13, 2010. These bonds bear interest at a rate that is reset at least annually through remarketing of the bonds. Legal Department staff worked with Finance staff and outside bond counsel to review the legal requirements for each remarketing, provide notices, certifications and opinions and prepare a remarketing statement (similar to the Official Statement for a new bond issue).