



## 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. On February 11, 2010, AFSCME withdrew this charge and PERB closed its file on this matter. As previously reported, the charge alleged that 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 October Board agenda. The charge sought 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. Subsequently, the Board ratified the withdrawal of the tentative MOUs from the October agenda and the parties have resumed negotiations on a successor MOU. The Legal Department represented Metropolitan in this matter. (See General Counsel's November 2009 Activity Report)

### ***AFSCME Local 1902 v. Metropolitan (U.S. District Court)***

On February 23, 2010, a stipulation for dismissal was filed in this action, and the lawsuit has been dismissed. This matter related to Metropolitan's disclosure of e-mails of union members in response to a public records request. As previously reported, AFSCME Local 1902 filed a federal district court lawsuit seeking an injunction to prevent the disclosure of e-mails. In response to the request, Metropolitan informed Local 1902 that the District intended to comply with the request in accordance with the California Public Records Act and District policy. Settlement discussions thereafter occurred between the requestor and Local 1902. The Legal Department defended Metropolitan's interest in the lawsuit. (See General Counsel's January 2009 Activity Report)

### ***Management and Professional Employees Association, AFSCME Local 1001 v. Metropolitan (Public Employment Relations Board)***

As previously reported, the Management and Professional Employees Association (MAPA) filed a PERB unfair practice charge on August 31, 2009, alleging Metropolitan violated the MMBA by purportedly engaging in abusive and anti-union conduct towards MAPA employees. On February 11, 2010, the Legal Department lodged a position statement seeking dismissal of the amended charge. The remedies requested include the issuance of a cease and desist order to address conduct the charge characterizes as discriminating against employees or interfering with the rights of employees to join or participate in the activities of a recognized bargaining unit. PERB directed MAPA to amend the charge, which it did on January 29, 2010. (See General Counsel's August 2009 Activity Report)

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

On February 16, 2010, Hearing Officer Carl B.A. Lange III issued his decision in response to an appeal of Metropolitan's denial of a grievance. The AFSCME grievance challenged the outcome of an individual job audit. The job audit, performed by Human Resources staff, concluded that a specific Administrative Assistant II is appropriately classified. In his decision, the hearing officer determined that Human Resources properly adhered to the job audit process, and that the grievant has been appropriately classified. Accordingly, AFSCME failed to meet its burden of establishing a violation of the AFSCME MOU, and Mr. Lange upheld Metropolitan's denial of the grievance. The Legal Department represented Metropolitan in this matter.



## Matters Involving Metropolitan

### **State Water Resources Control Board Flow Criteria Proceeding**

The SWRCB continues its process to develop flow criteria for the Delta ecosystem necessary to protect public trust resources as required under the recently enacted Delta legislation (SB 1, enacted November 12, 2009). The SWRCB held a pre-proceeding conference on January 7, 2010, and approximately 55 entities (including Metropolitan) filed notices of intent to appear, indicating they wished to present information at the proceeding. On February 16, about two dozen parties filed written testimony, exhibits and witness lists in preparation for SWRCB's March 22-24 informational hearings on the flow requirements. On February 23, the state and federal contractors filed their 100-page submittal to the SWRCB for the board's Delta flows proceeding. Metropolitan Legal and Bay-Delta Program staff provided extensive assistance in the preparation of testimony and exhibits submitted jointly on behalf of the State Water Contractors, federal export water contractors and a few individually named contractors including Metropolitan. Metropolitan Bay/Delta Program staff members have been identified as potential witnesses in the hearings. Cross-examination will not be allowed at the hearings, but the parties can submit written questions that SWRCB members and staff may direct to the witnesses appearing at the hearings. Metropolitan staff is reviewing the testimony and exhibits filed by other parties and assisting in the preparation of the written questions that must be filed by March 8, 2010. (See General Counsel's January 2010 Activity Report)

### ***Solano County Water Agency, et al. v. State of California Department of Water Resources (Sacramento Superior Court)***

The Department of Water Resources, Metropolitan and its fellow intervening state water contractors, and plaintiffs filed motions for cross summary judgment in this litigation on February 26, 2010. This case was filed by four state water contractors located north of the Delta alleging that since they

are located in the watershed of origin of State Water Project water, they should not be subject to the shortage provisions of their state water contracts. If plaintiffs are successful, there would be less water available to Metropolitan and other contractors during shortage years. The parties will have the opportunity to file responsive and then reply briefs and the cross summary judgment motions are currently scheduled for May 14, 2010. To the extent issues are not resolved in the summary judgment motions, a trial is expected in late summer or early fall of 2010.

### ***Delta Smelt and Salmon Biological Opinions Litigation (Metropolitan v. United States Fish and Wildlife Service; United States Bureau of Reclamation and California Department of Water Resources real parties in interest; 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. and State Water Contractors v. Locke, et al; Kern County Water Agency, et al. v. Gary Locke, et al.) (U.S. District Courts, Eastern District of California)***

A five-day evidentiary hearing on the motions for a preliminary injunction in both the Delta smelt and salmon Biological Opinion Endangered Species Act (ESA) cases is set for March 31, April 1, 2, 5 and 6, 2010. The Central Valley Project (CVP) contractors also have scheduled a hearing on their application for a temporary restraining order in the salmon ESA cases for March 29, 2010. Metropolitan expects to have its expert, Dr. Rick Deriso, testify and be one of the main expert witnesses at the preliminary injunction hearing. We also expect that Judge Wanger will hold a scheduling conference soon, and set a briefing schedule for cross-motions for summary judgment in the salmon ESA cases. Judge Wanger also may make some final decisions about court-appointed experts in the salmon ESA cases. Metropolitan's counsel compiled the names of various experts that the water contractors plan to nominate as court-appointed experts in the salmon cases.



## Cases to Watch

***Tehama-Colusa Canal Authority v. U.S. Department of the Interior* (U.S. District Court, Eastern District of California)**

The Tehama-Colusa Canal Authority (TCCA) filed this action on February 11, 2010, alleging that the United States is violating California's so-called watershed of origin statutes by not delivering to TCCA members 100% of the CVP water they demand in every year. TCCA members are public agencies that supply water primarily for irrigation to farmers in the northern Sacramento Valley. TCCA members do not have their own direct water rights, but have water service contracts with the U.S. Bureau of Reclamation for CVP water that subject them to shortages in years when there is not enough water to supply CVP customers' demands. The complaint alleges that since TCCA members are located within the Sacramento River watershed, they are entitled to all the water they demand before any CVP water is delivered to CVP contractors located outside the Sacramento River watershed, despite the shortage provision in their water supply contracts. This federal court case dealing with the federal CVP is thus analogous to *Solano County Water Agency, et. al. v. State of California Department of Water Resources* (see above). Staff is reviewing the complaint to determine what, if any, action would be appropriate for Metropolitan to take regarding this case. (See General Counsel's January 2010 Activity Report)