



Metropolitan Cases

San Diego County Water Authority v. MWD (Los Angeles County Superior Court)

Metropolitan filed an Amended Answer to San Diego County Water Authority's (SDCWA) complaint on August 20, 2010. The Amended Answer contained a more detailed set of factual allegations supporting Metropolitan's affirmative defenses. On that same date, eight of Metropolitan's member agencies also filed answers opposing SDCWA's complaint; those members are Foothill MWD, Glendale, Las Virgenes MWD, Los Angeles DWP, MWD of Orange County, Three Valleys MWD, Torrance and West Basin MWD. The Imperial Irrigation District (IID) and Utility Consumers Action Network (UCAN; a San Diego-based consumer advocacy group) filed answers in support of SDCWA's complaint. On September 1, 2010, Metropolitan filed a motion challenging IID's and UCAN's standing to file answers as "persons interested" in Metropolitan's rates. The motion is scheduled to be heard on September 28, 2010. SDCWA's action challenges Metropolitan's 2011 and 2012 rates adopted last April, in particular Metropolitan's inclusion of State Water Project (SWP) transportation costs required under the state water contract and the Water Stewardship Rate in the wheeling rate. (See General Counsel's June and July 2010 Monthly Activity Reports)

J-Line Co. (dba American-Marsh Pumps) v. Metropolitan (U.S. District Court, Western District of Tennessee)

On July 19, 2010, American Marsh Pumps (AMP) served a breach of contract lawsuit against Metropolitan arising from AMP's custom fabrication in Tennessee of a 30-cfs pump bowl assembly for the SWP's South Bay Pumping Plant. Metropolitan entered into the \$237,300 purchase agreement with AMP under the contract with DWR for machining, fabrication, procurement, and engineering services. After delivery of the pump, staff discovered multiple deviations from specifications. After AMP refused to perform the demanded repairs and testing, Metropolitan notified AMP that it was rejecting the pump and made it available for AMP's removal from Metropolitan's facilities. AMP filed its complaint in Tennessee state court. On August 17,

Metropolitan removed the case to federal court pursuant to the court's diversity jurisdiction over parties from different states. The parties have submitted a proposed scheduling order to the court, initial disclosures are due October 7, and Metropolitan is considering options for moving venue to Los Angeles.

Susan Robinson v. Metropolitan (Los Angeles County Superior Court)

On August 9, 2010, the hearing on Metropolitan's demurrer to the petition for writ of mandate and complaint was held. The court sustained the demurrer to the two complaint causes of action without leave to amend for failure to state a viable cause of action, and sustained the demurrer to the petition for writ cause of action with leave to amend for failure to name an indispensable party. On August 19, 2010, petitioner/plaintiff filed and served her first amended petition for writ of mandate. The petition contains one cause of action for a writ of mandate (Cal. Code of Civil Procedure Section 1094.5) and alleges that the Hearing Officer should have applied an adverse inference against Metropolitan, the evidence did not support the findings, the findings did not support discharge, and there was a violation of pre-discharge due process (*Skelly v. State Personnel Board*). Metropolitan's deadline to file its responsive pleading to the petition is September 23, 2010.

As previously reported, this case arises out of Hearing Officer Robert Bergeson's January 2010 decision sustaining petitioner/plaintiff's discharge from employment, following an appeal hearing pursuant to the Supervisors Association MOU. Metropolitan's Legal Department is providing legal representation for Metropolitan. (See General Counsel's April, May and June 2010 Activity Reports)



Matters Involving Metropolitan

Sacramento Regional County Sanitation District NPDES Permit Proceeding

On September 3, the Central Valley Regional Water Quality Control Board released a tentative permit that will set the water quality-based permit requirements for Sacramento Regional County Sanitation District's wastewater treatment plant. The Sanitation District's treatment plant is the largest wastewater discharger into the Sacramento-San Joaquin Delta. The Treatment Plant provides only a secondary level of treatment and has long been a water quality concern of Metropolitan for its discharge of nutrients, pathogens, and total organic carbon into the Delta water supply. The Treatment Plant's discharge of nitrogen, particularly ammonia, has been shown to be altering the food chain in the estuary to the detriment of Delta smelt and other native species.

For some time, Metropolitan, along with other state and federal contractors, has been working with the Regional Board to urge action in addressing the serious water quality concerns with respect to both the aquatic health of the Delta and drinking water quality. The tentative permit has good news on both fronts. The tentative permit calls for a

dramatic reduction of the ammonia discharge by requiring full nitrification and denitrification treatment by 2020, as well as tertiary filtration treatment to meet pathogen removal requirements. The tentative permit also includes additional permit limits and monitoring requirements for many other water quality constituents of concern, including toxic contaminants. This tentative permit represents the staff recommendation that will be the subject of a future decision by the Regional Water Board, which is scheduled for consideration in December 2010. Comments on the draft permit are due October 8, 2010.

In a related proceeding, Metropolitan, other urban State Water Contractor agencies, and the Contra Costa Water District had earlier brought a successful CEQA challenge in response to significant, unmitigated water quality impacts that would occur from a planned expansion of the Sanitation District's Treatment Plant. The Sanitation District appealed the trial court ruling and the case remains pending in the Third District Court of Appeal awaiting oral argument. (See General Counsel's January 2009 Activity Report)