



## Metropolitan Cases

### ***Central Basin Municipal Water District v. Water Replenishment District of Southern California (Los Angeles Superior Court)***

On January 14, 2011, Central Basin Municipal Water District (CBMWD) served Metropolitan with its Petition for Writ of Mandate for the above-referenced case, filed in the Los Angeles Superior Court on December 29, 2010. In this action, CBMWD alleges that the Water Replenishment District of Southern California (WRD) violated the California Environmental Quality Act (CEQA) by relying on exemptions from CEQA, including exemptions for court actions and the common sense exemption, when it declared a water emergency in the groundwater basin it manages, the Central Basin (basin), on November 19, 2010. CBMWD argues that WRD should have prepared a more extensive CEQA analysis, evaluating the potential impacts of the emergency declaration. CBMWD alleges that the emergency declaration was issued to allow other pumpers in the basin to store more water in the basin and for longer periods of time in contravention of principles in the judgment adjudicating the basin. CBMWD claims that because the declaration will allow storage of more water in the basin and for longer periods of time, it could have significant environmental effects, including flooding, increased surface water runoff, and drainage impacts. CBMWD seeks to have the emergency declaration vacated and an injunction issued to prohibit any actions under the declaration.

Metropolitan and its member agencies are named as real parties in interest in the lawsuit. CEQA litigants are required by law to name parties who have an interest in the lawsuit so they may participate in the litigation and protect their interests if they decide to do so. CBMWD alleges Metropolitan and its member agencies have an interest in the lawsuit because Metropolitan provides imported water for groundwater storage. Certain member agencies also hold groundwater rights in the basin. The General Counsel and executive management are currently assessing the extent to which Metropolitan should participate in the litigation.

### **San Luis Rey Indian Water Authority Arbitration**

A dispute has arisen between Metropolitan and the San Luis Rey Indian Water Authority over the delivery of Colorado River water that is conserved as a result of the All-American and Coachella Canal lining projects. In order to settle a dispute over water rights to the San Luis Rey River in San Diego County, the federal government sought alternative water supplies for five Indian Tribes with reservation lands along that river. Ultimately, the federal government determined to allocate a portion of the Colorado River water generated by the canal lining projects that were funded by the State of California and the San Diego County Water Authority (SDCWA). Pursuant to agreements executed with the Quantification Settlement Agreement (QSA), the California Colorado River water contractors agreed to allocate most of the conserved water to SDCWA, with a portion (16,000 acre-feet annually) to the Indian Tribes. Metropolitan executed an agreement with the tribal water authority to deliver the canal water. Pursuant to terms imposed by Congress in approving the San Luis Rey water rights settlement, the Indian Tribes are not entitled to any of the Colorado River water until they complete the settlement and dismiss pending lawsuits and administrative proceedings. That settlement has not been completed, and the conserved water has been delivered to Metropolitan in accordance with its Colorado River water supply contracts and the QSA agreements.

The delivery agreement between Metropolitan and the Indian Tribes includes provisions that Metropolitan will put money into trust for the Indian Water Authority for the canal lining water that it receives. Those payments will be held until the San Luis Rey settlement is complete and then will be paid to the Indian Water Authority. The dispute arose over how those payments should be calculated. The Indian Water Authority asserts that the contract terms require an addition of \$17.7 million to the trust fund for water deliveries through 2010 and increased deposits in the future. Metropolitan has rejected their interpretation of the contract and has further raised the issue of whether the payment obligation is legally enforceable. The dispute is subject to binding



arbitration pursuant to the terms of the delivery agreement. On January 12, 2011, the Indian Water Authority submitted a demand for arbitration.

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

The court heard defendants' motion for summary judgment or, alternatively, summary adjudication on January 26, 2011. The court granted summary adjudication on the defamation cause of action as to all five defendants, and so that cause of action is dismissed. The court took under submission and is still considering the cause of action for failure to prevent harassment, discrimination, and retaliation in violation of the Fair Employment and Housing Act (FEHA). The court postponed the two-week jury trial from February 14 to March 7, 2011. The parties participated in a second mediation on January 25, and in a mandatory settlement conference with the court on January 26, neither of which was successful. The parties are engaged in expert witness discovery. On February 8, the court will conduct the final status conference and will hear several pre-trial motions filed by defendants.

As previously reported, plaintiff, a Metropolitan employee, filed his initial complaint against Metropolitan and four employees in Los Angeles County Superior Court on September 8, 2009. Plaintiff alleged seven causes of action: discrimination based on race, national origin, ancestry, and age in violation of FEHA; harassment based on race, national origin, ancestry, age, and disability 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 were asserted against Metropolitan, and the harassment and defamation causes of action were also asserted against the individual defendants. Metropolitan successfully demurred to an eighth cause of action, for wrongful failure to promote in violation of public policy, and it was dismissed on February 1, 2010. The parties attended the first mediation on August 5, 2010 and were unable to settle. Metropolitan's Legal Department provided legal representation for all defendants through November 2010, and the law firm of Seyfarth Shaw LLP associated in as

counsel in November. (See General Counsel's July and October 2010 Activity Reports)

***Colorado River QSA Coordinated Cases (California Court of Appeal, Third District)***

On January 7, Metropolitan, Coachella Valley Water District (Coachella) and San Diego County Water Authority (San Diego) filed a 200-page joint opposition/reply brief with the Third District Court of Appeal in Sacramento. Imperial Irrigation District (IID), Vista Irrigation District and the City of Escondido, and the State also filed opposition/reply briefs. The County of Imperial (County), Imperial County Air Pollution Control District (ICAPCD), Cuatro Del Mar and other Category 2 parties have until February 11 to submit their final reply briefs.

As previously reported, the trial court held that the Quantification Settlement Agreement Joint Powers Authority (QSA JPA) agreement was invalid because it violated State constitutional debt limitation. Under the QSA JPA agreement, IID, Coachella and San Diego agreed to contribute \$163 million toward Salton Sea mitigation and restoration costs and the State agreed to pay any costs in excess of that amount. The court also held that 11 other agreements, including the QSA itself, were invalid because they were inextricably linked to the QSA JPA agreement. The trial court's decision was appealed by many parties. On May 7, the court of appeal granted a joint request by IID, Coachella, Metropolitan and San Diego to stay the trial court's judgment during the pendency of the appeal.

As also reported, the County and ICAPCD filed a federal lawsuit in October 2009 asserting that the Department of Interior, Bureau of Reclamation and other federal parties (Federal Defendants) failed to comply with the Clean Air Act and National Environmental Policy Act in approving the Colorado River Water Delivery Agreement. That lawsuit also named IID, Coachella, Metropolitan and San Diego as "real parties in interest," a designation that is not recognized in federal court. Accordingly, on August 23, Imperial, Coachella, Metropolitan and San Diego were permitted to intervene as additional defendants (Intervenors).

On September 9, the Federal Defendants lodged the administrative record with the court. The County and ICAPCD have requested that over 400 other documents be added to the record. The Federal Defendants are amenable to including some of these additional documents in the record,



but maintain that most are not relevant to this case. Accordingly, a motion on supplementing the record is scheduled to be heard by the court on March 4, 2011. In addition, status conferences were held on October 21 and December 21, which focused on establishing the schedule for filing motions for summary judgment (MSJs). Currently, plaintiffs' MSJ is due on April 1, 2011; Federal Defendants' and Intervenor's cross-MSJs/oppositions are due on May 9; plaintiffs' opposition/reply is due June 10; and Federal Defendants' and Intervenor's replies are due on July 1. (See General Counsel's May and September 2010 Monthly Activity Reports)

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

On January 25, 2011, plaintiffs filed their Appellants Opening Brief (AOB), along with an appendix that contains 60 volumes of supporting documents. DWR and intervenors have until March 11 to submit their Respondents Brief (RB) and combined Respondents Brief/Cross-Appellants Opening Brief (RB/XAOB), respectively. However, in light of the large number of documents that need to be reviewed, intervenors are requesting a

60-day extension of that deadline. Plaintiffs are supportive of this request, provided a similar extension is granted to them.

As previously reported, on September 14, 2009, the court issued a final ruling in favor of DWR and the intervenors. The court rejected all of the arguments made by the plaintiffs challenging the manner in which revenues from the Hyatt-Thermalito power complex have been and are being allocated. This ruling was memorialized in a statement of decision and interlocutory judgment issued by the court on October 16 and November 2, 2009, respectively. Based on this ruling, the court dismissed the remaining causes of actions asserted by the plaintiffs and, on June 17, 2010, entered a final judgment dismissing both their original suit and a related case they filed in 2007. On July 1, 2010, plaintiffs filed a notice of appeal. Six days later, intervenors filed a notice of cross-appeal. The parties initially agreed to a briefing schedule that would have concluded in April or May 2011. If the extensions noted above are granted by the court, briefing in this appeal now will be completed in August or September 2011. (See General Counsel's June and October 2010 Monthly Activity Reports)

## Matters Involving Metropolitan

***Monterey II Cases: Central Delta Water Agency, et al. v. Department of Water Resources; Rosedale-Rio Bravo Water Storage District, et al. v. Department of Water Resources; Central Delta Water Agency, et al. v. Kern County Water Agency (Sacramento County Superior Court)***

These lawsuits brought by environmental organizations, two Delta water agencies, and two Kern County water storage districts challenge the Monterey Amendment to the State Water Project contracts. The cases include CEQA challenges to DWR's May 2010 completion of a new Environmental Impact Report (EIR) for the project as well as reverse validation challenges to the underlying contracts. While two of the three cases were originally filed in Kern County, all three now reside in Sacramento County superior court. Metropolitan is a party to two of the three cases.

This month, following a preemptory challenge filed by defendant Kern County Water Agency to dismiss the Honorable Judge Connelly, the cases were reassigned to the Honorable Judge Frawley. Metropolitan filed its answer to one of the lawsuits and staff has been coordinating our efforts with DWR and the other contractors. Activity in this litigation is expected to remain minimal in the near term as DWR prepares the administrative record and Judge Frawley considers additional pretrial and case management matters. (See General Counsel's October and December 2010 Activity Reports)

***Sacramento Regional County Sanitation District NPDES Permit***

Last December, the Central Valley Regional Water Quality Control Board (Regional Board) ordered a new discharge permit for the Sacramento Regional County Sanitation District's (SRCSD's) 181-million-gallon-per-day (mgd) wastewater treatment plant. The new



discharge permit will require nitrification/denitrification upgrades to reduce nitrogen that is currently being discharged into the Sacramento-San Joaquin Bay Delta. Nitrogen in the form of ammonium has been shown to be altering the food web to the detriment of native, endangered species. The permit will also require tertiary filtration upgrades to remove pathogens and other constituents that are a public health concern to downstream water districts as well as to the California Department of Public Health.

On January 10, SRCSD appealed the Regional Board's order to the SWRCB, seeking to overturn the new stringent permit limits. The California Sportfishing Protection Alliance also appealed the order, but on the grounds that the new permit is not stringent enough. Metropolitan is a formal party to the permit proceedings and will be participating in the appeals. Responses to the appeal petitions will be due 30 days from the date the SWRCB deems the petitions to be complete. (See General Counsel's October and December 2010 Activity Reports)

**State Water Resources Control Board  
Review of Bay-Delta Water Quality  
Objectives**

Metropolitan's Legal Department and General Manager staff attended two days of hearings (January 6 & 7) held by the State Water Resources Control Board (SWRCB) to review its salinity objectives protecting agricultural beneficial uses and San Joaquin River flow requirements. Staff previously contributed to written comments to be submitted to the SWRCB on these issues on behalf of the State Water Contractors. Staff continues to work with the State Water Contractors on additional comments and information to be submitted to the SWRCB by February 8, 2011. (See General Counsel's December 2010 Monthly Report)