



Metropolitan Cases

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

On March 28, 2011, the court entered an order dismissing Metropolitan and its member agencies, except those with pumping rights in the Central Basin. Central Basin Municipal Water District (CBMWD) filed this action on January 14, 2011, alleging that the Water Replenishment District of Southern California violated the California Environmental Quality Act when it declared a water emergency in the Central Basin on November 19, 2010. Metropolitan and its member agencies were named as real parties in interest in the lawsuit.

Metropolitan's General Counsel and General Manager concluded that no interests exist that warrant Metropolitan's involvement in this action. Metropolitan staff attorneys and member agency counsel negotiated a stipulated dismissal as to Metropolitan and its member agencies that do not have pumping rights in the Central Basin. Now that the order has been entered, Metropolitan is no longer a party to the case, but will continue to monitor it.

Metropolitan is separately monitoring challenges brought by CBMWD and several of the parties to the Central Basin adjudication to the substance of the emergency drought declaration. (See General Counsel's January and February 2011 Activity Reports.)

Orange County Water District v. Northrop Corporation, et al.; Northrop Grumman Systems Corporation v. Metropolitan (Orange County Superior Court)

This case was transferred to a new judge, the Honorable Kim G. Dunning, at the end of 2010. At a status conference on April 1, 2011, Judge Dunning set the matter for trial to begin on September 14, 2011. She also restarted the discovery clock as of April 4, 2011, and set pending motions for summary judgment for hearing in May.

As previously reported, in December 2004, Orange County Water District (OCWD) initiated this action against Northrop Corporation and other industrial defendants seeking cleanup costs and damages

from volatile organic compound contamination of groundwater within the North Basin of the Orange County Aquifer. Groundwater investigations showed perchlorate levels in the basin above the regulatory standard. OCWD has alleged that a significant portion of the clean-up costs are attributable to the enhanced treatment required for perchlorate.

In January 2008, Northrop brought a cross-complaint against Metropolitan, alleging that Metropolitan is responsible for any additional costs of treatment necessitated by the existence of perchlorate, alleging that the source of the perchlorate in the groundwater basin is water imported from the Colorado River. The court at that time severed OCWD's claims from Northrop's cross-claims and set different trial dates for the two phases of the case. Northrop may pursue its indemnification cross-claim against Metropolitan only if the court imposes perchlorate cleanup liability on Northrop.

As the case is currently scheduled, Metropolitan will not participate in phase one of the trial; however, Metropolitan will participate in discovery for this phase. Legal Department staff will work with outside counsel on discovery matters and possible filing of dispositive motions.

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)

Delta Smelt BiOp Litigation

On March 29, 2011, Judge Wanger issued a final judgment which formalizes the rulings the court previously made in its December 14, 2010 summary judgment decision. The final judgment remands the Biological Opinion (BiOp) for Delta smelt back to the U.S. Fish and Wildlife Service



(FWS), and directs the FWS to complete a new Biological Opinion by October 1, 2011, with the exception of certain additional findings which must be made by November 30, 2011. The final judgment also directs the Bureau of Reclamation to complete its review of the new BiOp under the National Environmental Policy Act (NEPA) by December 15, 2011. (See General Counsel's December 2010 and February 2011 Monthly Activity Reports.)

Salmon BiOp Litigation

Judge Wanger held a three-day evidentiary hearing from March 23-25, 2011 on the motions for a preliminary injunction in the *Consolidated Salmon Cases*. The motions, which were brought by the water contractors and DWR, had sought to enjoin both the Old and Middle River (OMR) flow restrictions and the San Joaquin River inflow:export (I:E) ratio. However, because of wet hydrologic conditions, it was very unlikely that the OMR criteria would actually restrict project exports. Consequently, the challenge to the OMR criteria was dropped, and the preliminary injunction motion only challenged the San Joaquin River I:E ratio. At the close of the hearing on Friday, March 25, the judge indicated that he would rule on the challenge to the San Joaquin River I:E ratio the following Wednesday, March 30, shortly before the I:E restrictions went into effect on April 1, 2011. On Monday, March 28, the federal defendants notified the court that the Bureau of Reclamation was increasing the allocation of water from the CVP for South-of-Delta agricultural water users from 55 to 65 percent, and increasing the allocation for South-of-Delta M&I water users from 80 to 90%. The federal defendants also informed the court that because San Joaquin flows would probably be high through the end of May, they did not expect the I:E ratio to restrict project exports. The court then directed all parties to address whether the challenge to the I:E ratio was now moot given that the federal government expected that that I:E ratio would not constrain exports in the current hydrologic conditions. After considering the parties' submittals, the court issued an order on March 30, 2011 deeming the preliminary injunction motions to be withdrawn in light of the federal government's representation that the I:E ratio is not expected to constrain exports. The court's order also provided that if circumstances change and the I:E ratio does restrict exports, then the water contractors and DWR may renew their motion to enjoin the I:E ratio, which will be heard on an

expedited basis. (See General Counsel's December 2010 and February 2011 Monthly Activity Reports.)

Village Retail Center, LLC v. Metropolitan Water District (Los Angeles County Superior Court)

This inverse condemnation and nuisance action relates to the construction of the North Reach of Perris Valley Pipeline within Alessandro Boulevard in Riverside. During construction, the north lanes of Alessandro Boulevard were closed for trenching and laying the pipeline. All traffic was moved to the south side of the street and access to properties on the north side was restricted. The lawsuit was filed by the owners of a vacant parcel of land on the north side of Alessandro alleging that the project interfered with the proposed development of a shopping center on the property. The plaintiffs also allege that the pipeline trench diverted the subsurface water supply that was intended to be used to irrigate landscaping on the property. The plaintiffs sued both Metropolitan and its contractor, Rasic Construction.

On March 17, the court heard argument on several motions by Metropolitan and Rasic. First, Metropolitan brought a motion to compel further discovery responses from plaintiffs, which the court granted with an award of \$6,225 in sanctions. More importantly, the court issued rulings granting in part Metropolitan's motion for summary adjudication. The court ruled that Metropolitan was legally entitled to perform the pipeline construction within the street right-of-way and, as a matter of law, did not unreasonably interfere with use of plaintiffs' property. The plaintiffs' claim for \$6 million for damages for interference with their development was rejected as to both Metropolitan and Rasic. The court determined that the groundwater claim could proceed to trial as to Metropolitan. Rasic was released from all liability to plaintiffs on the grounds that there was no evidence that it deviated from the plans and specifications for the construction work.

Plaintiffs have now replaced their attorneys and the trial in the case has been moved to May 16. The sole remaining issue to be tried is whether the pipeline construction has interfered with the subsurface water supply, and if so, what damages if any are due to plaintiffs. Metropolitan is prepared to defend against this claim.

In March, the Metropolitan Board authorized staff to make a settlement offer jointly with Rasic. In light of the court's rulings, staff is considering



making a reduced offer to reflect the reduction in potential damages. (See General Counsel's November 2010 Monthly Activity Report.)

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

The parties resolved the case on March 5, 2011, prior to a two-week jury trial scheduled to commence on March 7, 2011 before the Honorable Teresa Sanchez-Gordon.

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.

Metropolitan's Legal Department provided legal representation for all defendants through November 2010, when the law firm of Seyfarth Shaw LLP associated in as counsel. (See General Counsel's January and February 2011 Activity Reports.)

Jena Minor v. Metropolitan (Los Angeles County Superior Court)

The parties participated in a mediation on March 29, 2011, but were unable to resolve the

case. On March 11, Metropolitan filed a motion for summary judgment or, alternatively, summary adjudication, which is scheduled for hearing on May 26, 2011. On February 4, Metropolitan filed a motion to compel plaintiff's further production of documents, which is scheduled for hearing on April 6. The court rescheduled the Final Status Conference to June 13. Metropolitan's Legal Department provided legal representation for Metropolitan through November 2010, when the law firm of Meserve, Mumper and Hughes LLP associated in as counsel.

As previously reported, on March 26, 2010, plaintiff, a Metropolitan employee, filed a complaint in Los Angeles County Superior Court against Metropolitan. Plaintiff alleges retaliation in violation of the Fair Employment and Housing Act for having engaged in the protected activity of complaining about gender and race discrimination and sexual harassment, and for having complained about retaliation. The case is set for a 14-day jury trial commencing June 29, 2011. The court also ordered the parties to mediation, to be completed by May 1, 2011. The parties are currently engaged in discovery. (See General Counsel's June and July 2010 Activity Reports.)

Matters Involving Metropolitan

Grand Canyon Trust v. U.S. Bureau of Reclamation, et al. (U.S. District Court, Arizona District)

In December 2007, Grand Canyon Trust (Trust) began this litigation challenging the federal government's operation of Glen Canyon Dam (Dam). The lawsuit includes allegations that the Bureau of Reclamation's determination of release schedules, and resulting effects on the endangered humpback chub native fish species, violate the Endangered Species Act (ESA) and NEPA. The claim of greatest concern to Metropolitan alleged that Reclamation's process for annual operational decisionmaking (Annual Operating Plans, or AOPs) must include annual ESA and NEPA consultations and documentation. Metropolitan argued that such annual consultations are not required by law and would cause unnecessary delay and uncertainty in Reclamation's decisionmaking. In May 2008, Metropolitan intervened in the case along with Imperial Irrigation District and Central Arizona Water Conservation District. In September 2008, the court ruled against the Trust (and in favor of

Metropolitan) on its AOP claim. The court found that AOPs are not "agency actions" for purposes of ESA and NEPA, because the actual decisions about releases are made through other processes complying independently with ESA and NEPA. The court found that AOPs make projections only, and that actual flow decisions are made only as the water year progresses. Since this key ruling, the court has ruled on other operations-based ESA and NEPA claims, remanded certain issues to Reclamation and the FWS, and decided amended claims based on revised federal environmental analyses. On March 29, the court issued a final ruling in the case, upholding all of the federal agencies' prior decision-making for Dam operations. The Trust has 60 days to appeal.

Fort Mojave Indian Tribe v. Dept. of Toxic Substances Control (DTSC) (Sacramento County Superior Court)

On March 2, 2011, the Fort Mojave Indian Tribe (Tribe) filed an action challenging the validity of the Final Environmental Impact Report (FEIR) for the Topock Chromium VI cleanup project.



Metropolitan has been closely involved in development of the cleanup program for many years. The main elements of the remediation plan include: (1) in-situ biological treatment using a line of wells to circulate groundwater and distribute an organic carbon source to convert Chromium VI (a carcinogen) into non-harmful Chromium III; (2) extraction wells near the Colorado River to provide hydraulic capture of the plume, accelerate cleanup of the floodplain, and enhance the flow of contaminated groundwater through the biological treatment zone; and (3) institutional controls to restrict surface land uses and prevent the use of groundwater.

The primary allegations of the litigation are: (1) DTSC has not complied with the terms of a 2006 settlement agreement that resulted in conveyance of Metropolitan property for construction of an interim treatment plant; (2) the FEIR does not adequately address the role of the interim treatment plant in the long-term remediation plan; and (3) the FEIR does not adequately address impacts to cultural resources or mitigation of those impacts, particularly the Topock Maze, a sacred place for the Tribe.

The Legal Department will monitor this case as it progresses and recommend further Board action, as appropriate.

Items of Interest

Finances

Metropolitan executed two standby bond purchase agreements effective March 24, 2011:

The Amended and Restated Standby Bond Purchase Agreement with Bank of America, N.A., provides liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2008 Series A-1. This agreement extended the termination date of an existing agreement with Bank of America from March 24, 2011, to September 23, 2014.

The Standby Bond Purchase Agreement with Barclays Bank PLC provides liquidity support for Metropolitan's Water Revenue Refunding Bonds, 2008 Series A-1. This agreement replaced a standby bond purchase agreement Landesbank Baden-Württemberg that expired on March 24, 2011. The agreement with Barclays Bank terminates on September 23, 2013.

Legal Department staff attorneys worked with bond counsel and bank counsel to negotiate and deliver these agreements and prepare bond disclosure documents.