



## Metropolitan Cases

### ***San Diego County Water Authority v. Metropolitan Water District of Southern California (San Francisco Superior Court)***

The parties filed their “Initial Disclosure Statements” in this litigation on May 27, 2011. Trial Judge Richard A. Kramer directed each party to file this document to state its interest in the litigation, the issues it seeks to have resolved, the relief it seeks and to describe the standard of review the judge should follow to decide the case. These statements will form the basis for the case management conference scheduled for June 17, 2011. In particular, the judge may decide Metropolitan’s pending motion to dismiss the Imperial Irrigation District and Utility Consumers Action Network from the case based on their lack of direct interest in Metropolitan’s rates. In this action San Diego County Water Authority is challenging the validity of Metropolitan’s water rates, in particular the System Access Rate and the Water Stewardship Rate. (See General Counsel’s February and April 2011 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)***

In the appeal of the “Hyatt-Thermalito” case relating to the manner in which the Department of Water Resources (DWR) charges contractors for the power required to move water through the State Aqueduct, on May 17, 2011, intervenors filed their combined Respondents’ Brief/Cross-Appellants’ Opening Brief. As previously reported, intervenors’ cross-appeal is limited solely to the question of whether plaintiffs’ claims are barred by the applicable statute of limitations. If the court of appeal upholds the trial court’s decision, which was in our favor, this cross-appeal will become moot. On May 18, DWR filed its Respondent’s Brief. Plaintiffs’ combined Reply Brief/Cross-Respondents’ Brief must be filed by August 16, and intervenors’ final Reply Brief is due 30 days after that. No date has been set for oral argument.

As previously reported, on September 14, 2009, the trial 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. 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. (See General Counsel’s January and February 2011 Activity Reports.)

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

On May 26, 2011, the hearing on Metropolitan’s motion for summary judgment or, alternatively, summary adjudication occurred. The court’s tentative ruling was to grant summary judgment in favor of Metropolitan. Following oral argument, the court took the matter under submission and has not yet issued its final decision. The parties are completing discovery, including expert discovery.

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 Final Status Conference on June 13, 2011 and a 14-day jury trial commencing June 29. The parties previously participated in a mediation on March 29, but were unable to resolve the case. (See General Counsel’s March 2011 Activity Report.)

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

As previously reported, AFSCME filed a Public Employment Relations Board (PERB) unfair practice charge against Metropolitan on September 24, 2010. The charge alleges



Metropolitan violated the Meyers-Milias-Brown Act (MMBA) and PERB regulations by issuing disciplinary actions against employees based on a “new” policy governing cell phone usage that was implemented without going through the meet and confer process. PERB filed a complaint on April 15, 2011. The complaint alleges Metropolitan committed an unfair practice by issuing a new policy without prior notice to AFSCME and without meeting and conferring with AFSCME. Metropolitan answered the complaint and appeared at an informal conference on May 26. The parties settled this matter without any admission of wrongdoing by Metropolitan and without any admission by Local 1902 that the underlying charge lacks merit. Under the settlement, AFSCME and Metropolitan agreed to a “permissible use” policy governing personal cell phone usage at work, and Metropolitan agreed to rescind four counseling memos and one minor disciplinary action. AFSCME withdrew the underlying charge with prejudice, and PERB dismissed the complaint on May 26, 2011. The Legal Department represented Metropolitan. (See General Counsel’s September 2010 and April 2011 Activity Reports.)

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

As previously reported, AFSCME filed a PERB unfair practice charge against Metropolitan on March 25, 2010, alleging Metropolitan violated the MMBA by requiring Administrative Analysts and

Senior Administrative Analysts to perform procurement duties without first meeting and conferring with Local 1902. Metropolitan responded by lodging a position statement seeking dismissal of the charge. On May 10, 2011, PERB notified Metropolitan of the closure of this matter based on AFSCME’s voluntary withdrawal of the underlying unfair practice charge. The Legal Department represented Metropolitan in this matter. (See General Counsel’s March 2010 Activity Report.)

***Delta Smelt Biological Opinion 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.) (U.S. District Court, Eastern District of California)***

Judge Wanger held a status conference on June 1, 2011, and set a briefing schedule and hearing date for a motion to enjoin enforcement of the Fall X2 flow restriction this year. A four-day evidentiary hearing is currently set for July 26-29, 2011. This case pertains to the challenge filed by Metropolitan and other water contractors to the Biological Opinion issued pursuant to the Endangered Species Act for the Delta Smelt and the operating criteria imposed on the State Water Project. (See General Counsel’s March and April 2011 Activity Reports.)

**Matters Involving Metropolitan**

***Western Electricity Coordinating Council Compliance Audit of Metropolitan***

On May 25, 2011, Metropolitan had its first off-site audit by the Western Electricity Coordinating Council (WECC) to review evidence of compliance with 50 requirements under 15 of the national electric reliability standards applicable to Metropolitan. These mandatory reliability standards were established by the Federal Energy Policy Act of 2005 under the oversight of the Federal Energy Regulatory Commission (FERC). In 2007, FERC approved 83 reliability standards which became enforceable June 18, 2007, with penalties per violation per day of up to \$1,000,000. Metropolitan’s audit covered the period June 18, 2007 through May 25, 2011 for all but 7 Critical Infrastructure Protection standards, for which the

audit period was October 1, 2010 through May 25, 2011. The audit concluded with no findings of non-compliance. The next comparable audit by WECC will be five to six years from the May 2011 audit date.

Legal Department staff attorneys provided support, assistance and legal advice throughout the compliance period and the audit.

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

Metropolitan Legal staff, along with outside counsel, DWR personnel and representatives of other parties in this case, participated in an all-day settlement conference presided over by Judge



Robert Hight on May 26, 2011. Metropolitan, DWR and other state water contractors supporting DWR, proposed potential concepts that could be used to resolve the litigation and plaintiffs offered counter-proposals. The parties agreed to develop, exchange and model information to further explore these concepts. Judge Hight scheduled another settlement conference on June 21, 2011 to determine whether discussions should continue. Plaintiffs in this action (four state water contractors located north of the Delta) allege 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. Metropolitan and 13 other state water contractors intervened in support of DWR. (See General Counsel's May and October 2010 Activity Reports.)

***Grand Canyon Trust v. U.S. Bureau of Reclamation, et al.* (U.S. District Court, Arizona District, U.S. Court of Appeal for the Ninth Circuit)**

In December 2007, the Grand Canyon Trust (Trust) initiated this litigation challenging the federal government's operation of Glen Canyon Dam. Metropolitan, along with IID and Arizona,

intervened as real parties in interest. On March 29, 2011 the court issued a final ruling in the case, upholding all the federal agencies' prior decisionmaking for Glen Canyon Dam operations. On May 26, the Trust filed its notice of appeal to the Ninth Circuit Court of Appeal.

As previously reported, the Trust filed this lawsuit which includes multiple counts, including that Dam operations violate the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) and that the Bureau of Reclamation's process for annual operational decisionmaking (Annual Operating Plans, or AOPs) must include annual ESA and NEPA consultations and documentation.

In September 2008, the court ruled against the Trust on its AOP claim, finding that AOPs are not "agency actions" for purposes of ESA and NEPA.

Metropolitan will defend the trial court's decisions in the Ninth Circuit Court of Appeal, with emphasis upon the AOP process and NEPA/ESA compliance. The Trust's brief is due September 6, 2011 and the United States' brief is due October 6. The timing of briefing by intervenors is still under consideration. (See General Counsel's March 2011 Activity Report.)

## Items of Interest

### Finances

On May 24, 2011, Metropolitan executed bond purchase contracts with Morgan Stanley & Co. Incorporated, underwriter for \$64,440,000 Water Revenue Refunding Bonds, 2011 Series A-1 and \$50,000,000 Water Revenue Refunding Bonds, 2011 Series A-2 and with Barclays Capital Inc., underwriter for \$64,435,000 Water Revenue Refunding Bonds, 2011 Series A-3 and \$50,000,000 Water Revenue Refunding Bonds, 2011 Series A-4. All four series of bonds are being issued for debt service savings.

Legal Department staff attorneys prepared Appendix A for the Official Statement describing these bonds and worked with bond counsel to negotiate and deliver these agreements and prepare bond disclosure documents, while assisting Finance staff and outside bond counsel with the transaction. Closing for the 2011 Series A bonds was June 2, 2011.